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OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There is one Extraordinary issue to the Official Gazette, Series II No. 25 dated 19-09-2019 namely, Extraordinary dated 20-09-2019 from pages 395 to 396 regarding Notification from Department of Elections.

GOVERNMENT OF GOA

Department of Agriculture

Directorate of Agriculture

Order

No. 2/9/95-AGR/2019-20/Part(I)/823

On recommendation of the Departmental Promotion Committee conveyed by the Goa Public Service Commission vide their letter No. COM/II/11/2(1)/2016/164 dated 14-08-2019, Government is pleased to promote the following Agriculture Officers to the post of Subject Matter Specialist, Group 'A' Gazetted, in Krishi Vigyan Kendra, South under the Directorate of Agriculture on regular basis in the pay band of PB-III Rs. 15600-39100+ Rs. 5400 Grade Pay at Level 10 of the 7th CPC pay matrix with immediate effect:

- 1) Shri Kishore Bhawe, officiating Assistant Director of Agriculture.
- 2) Shri Pradeep M. Malik, officiating Assistant Director of Agriculture.

On regular promotion they are posted as shown below:

- 1) Shri Kishore Bhawe, posted as Subject Matter Specialist (Horticulture), by relieving Shri Shriram Dhaimodkar of additional charge.
- 2) Shri Pradeep M. Malik, posted as Subject Matter Specialist (Agronomy), by relieving Shri Chandrahas N. Dessai.

The above officers shall be on probation for a period of two years from the date of their joining.

They shall exercise option within one month from the date of promotion to fix their pay in terms of F.R. 22(I) (a) (1).

By order and in the name of the Governor of Goa.

Madhav B. Kelkar, Director & ex officio Jt. Secretary (Agriculture).

Tonca-Caranzalem, 20th September, 2019.

Order

No. 2/9/95-AGR/2019-20/Part(I)/824

On recommendation of the Departmental Promotion Committee conveyed by Goa Public Service Commission vide their letter No. COM/II/11/2(1)/2016/164 dated 14-08-2019, Government is pleased to promote and appoint Shri Girish A. Kenkre, Agriculture Officer, Group 'B' Gazetted to the post of Subject Matter Specialist on officiating basis in the pay band of PB-III Rs. 15600-39100+Rs. 5400 Grade Pay at Level 10 of the 7th CPC pay matrix with immediate effect until further orders or till the post is filled on regular basis whichever is earlier. He shall be posted as shown below:

Sr. No.	Name of the Officer	Designation & Place of present posting	Place of posting on officiating basis to the post of Subject Matter Specialist
1	2	3	4
1.	Shri Girish A. Kenkre	Agriculture Officer, District Agriculture Office, South	As officiating Subject Matter Specialist (Plant Protection), Krishi Vigyan Kendra, South under Directorate of Agriculture by relieving Shri

1	2	3
		Rajesh Desai of his additional charge. He shall draw his pay and allowances against the Budget Head 2415-01-150-01-01.

The officiating promotion will not bestow on the above officer any claim for regular promotion and the service rendered on officiating basis in the grade will not count for the purpose of seniority in that grade for eligibility for promotion to the next higher grade.

By order and in the name of the Governor of Goa.

Madhav B. Kelkar, Director & ex officio Jt. Secretary (Agriculture).

Tonca-Caranzalem, 20th September, 2019.

Order

No. 2/9/95-AGR/2019-20/Part(I)/825

In order to accommodate the newly promoted officers against the post of Subject Matter Specialist at Krishi Vigyan Kendra, South under the Directorate of Agriculture, Government is pleased to order the transfer of the following officer presently holding the post as shown below:

Sr. No.	Name of the Officer & Designation	Place of posting on transfer
1	2	3
1.	Shri Chandrahas K. Dessai, Subject Matter Specialist (Agronomy)	As Assistant Director of Agriculture (Extension) in the Directorate of Agriculture in place of Shri Kishore Bhawe, holding the post on officiating basis being promoted on regular basis against the post of Subject Matter Specialist.

Joining time and TA for the above officer will be regulated as per Transfer Rules in force.

By order and in the name of the Governor of Goa.

Madhav B. Kelkar, Director & ex officio Jt. Secretary (Agriculture).

Tonca-Caranzalem, 20th September, 2019.

Order

No. 2/9/95-AGR/2019-20/Part(I)/826

On recommendation of the Departmental Promotion Committee conveyed by Goa Public Service Commission vide their letter No. COM/II/11/2(2)/2018/163 dated 14-08-2019, Government is pleased to promote the following Assistant Agriculture Officers to the post of Agriculture Officer, Group 'B' Gazetted, in the Directorate of Agriculture on regular basis in the Pay Band of Rs. 9300-34800+Rs. 4600 Grade Pay (Level-7 of the 7th Pay Commission Matrix) with immediate effect.

- 1) Kum. Milan S. Gaonkar (ST).
- 2) Smt. Nilima Y. Gawas.
- 3) Kum. Gauri Subhash Prabhu Dessai.

On regular promotion, they are posted as shown below:

Sr. No.	Name of the Officer	Designation & Place of present posting	Place of posting on regular promotion to the post of Agriculture Officer
1	2	3	4
1.	Kum. Milan S. Gaonkar (ST)	Asst. Agriculture Officer, Zonal Agriculture Office, Sanguem	District Agriculture Office, North, Directorate of Agriculture, Tonca-Caranzalem.

1	2	3
2. Smt. Nilima Y. Gawas	Officiating Agriculture Officer, posted as Zonal Agriculture Officer, Tiswadi	On regular promotion to be retained as Zonal Agriculture Officer, Tiswadi.
3. Kum. Gauri Subhash Prabhu Dessai	Officiating Agriculture Officer, posted as Zonal Agriculture Officer, Sanguem	On regular promotion to be retained as Zonal Agriculture Officer, Sanguem.

The above Officers shall exercise their option within one month from the date of promotion to fix their pay in terms of F.R. 22(I) (a) (1).

By order and in the name of the Governor of Goa.

Madhav B. Kelkar, Director & ex officio Jt. Secretary (Agriculture).

Tonca-Caranzalem, 20th September, 2019.

Order

No. 2/9/95-AGR/2019-20/Part(I)/827

On recommendation of the Departmental Promotion Committee conveyed by Goa Public Service Commission vide their No. COM/II/11/2(2)/2018/163 dated 14-08-2019, Government is pleased to promote and appoint the following Assistant Agriculture Officers, Group 'B' Gazetted to the post of Agriculture Officer against the reserved category on officiating basis in the pay scale of Rs. 9300-34800+Rs. 4600 Grade Pay which is at Level-7 of the 7th Pay Commission Matrix with immediate effect until further orders or till the posts are filled on regular basis by the respective category whichever is earlier.

Promotion on officiating basis:

Against the resultant vacancy of Subject Matter Specialist (Plant Protection) promoted on officiating basis:

1) Shri Sandesh Jiva Raut Dessai.

Against Scheduled Caste and Scheduled Tribe vacancies of Agriculture Officers:

2) Shri Vishwanath Narayan Gawas.

3) Shri Kirtiraj Naik Gaonkar.

On officiating basis they are posted as shown below:

Sr. No.	Name of the Officer	Designation & Place of present posting	Place of posting on officiating basis to the post of Agriculture Officer
1	2	3	4
1.	Shri Sandesh Jiva Raut Dessai	Officiating Agriculture Officer, posted as Zonal Agriculture Officer, Quepem	To be retained as officiating Zonal Agriculture Officer, Quepem.
2.	Shri Vishwanath Narayan Gawas	Asst. Agriculture Officer, Zonal Agriculture Office, Satari	On officiating basis as Agriculture Officer shall hold the post of Agriculture Officer in District Agriculture Office (North) under B.H 2402-00-001-01-01 vacated by Smt. Vaibhavi Dessai.
3.	Shri Kirtiraj Naik Gaonkar	Asst. Agriculture Officer, Zonal Agriculture Office, Canacona	On officiating basis as Agriculture Officer shall hold the post of Agriculture Officer in District Agriculture Office (South) under B.H 2401-00-105-02-01 vacated by Kum. Gauri Subhash Prabhu Dessai.

The officiating promotion will not bestow on the above officers any claim for regular promotion and the service rendered on officiating basis in the grade will not count for the purpose of seniority in that grade for eligibility for promotion to the next higher grade.

By order and in the name of the Governor of Goa.

Madhav B. Kelkar, Director & ex officio Jt. Secretary (Agriculture).

Tonca-Caranzalem, 20th September, 2019.

Department of Education, Art & Culture

Directorate of Higher Education

Certificate

No. 8/2/2014-DHE(Q)/5309

Read: Order No. 8/2/2014-DHE(Q)/5730 dated 20-02-2019.

Certified that the character and antecedents of Ms. Shraddha Shrikant Naik (OBC) appointed to the post of Assistant Professor in Political Science (Group "A" Gazetted) in Government College of Arts, Science and Commerce, Sanquelim-Goa under Directorate of Higher Education vide above referred Order has been verified by the Addl. Collector & ADM, Office of the District Magistrate, North Goa District, Panaji-Goa and nothing adverse has come to the notice of the Government.

Prasad G. Volvoikar, Under Secretary (Higher Education).

Porvorim, 24th September, 2019.

Directorate of Technical Education
College Section

Order

No. 8/1/76/GUK/PF/GCA/DTE/2019/1843

Read: Memorandum No. 8/34/86/EDN/Vol.II/833 dated 03-07-2019.

On the recommendations of the Goa Public Service Commission conveyed vide their letter No. COM/I/5/6(2)/2017/83 dated 29-05-2019, Government is pleased to appoint Shri Gopal Uttam Kudaskar on temporary basis to the post of Assistant Professor in Fine Art (Painting) (Group 'A' Gazetted) at Goa College of Art, Altinho, Panaji-Goa, on an initial pay at Level 10 [(i.e. on an initial pay of Rs. 15,600/- (pre-revised) in the Pay Scale of Rs. 15,600-39,100 (pre-revised) (PB-3)+Academic Grade Pay of Rs. 6000/- (pre-revised)] w.e.f. from the date of joining as per the terms & conditions contained in the Memorandum cited above.

The appointment is against the post of Assistant Professor in Fine Art (Painting) created vide order No. 8/26/81/WET dated 02-07-1983, vacated by Shri Mahendra M. Chodankar due to superannuation on 31-10-2016.

Shri Gopal Uttam Kudaskar will be on probation for a period of two years.

He should join duties within 30 days of the receipt of this order, failing which this order is liable to be cancelled without further notice.

He has been declared fit by Medical Board, Goa Medical College & Hospital, Bambolim vide letter

No. 4/105/85-H/GMC/2019/198 dated 23-07-2019. His character and antecedents have been verified and nothing adverse is reported against him as conveyed by the Additional Collector & ADM, North Goa, Office of the District Magistrate, North Goa, Magisterial Branch, Collectorate Bldg., Panaji vide letter No. 2/6/2013-MAG/VCA/3418 dated 16-09-2019.

By order and in the name of the Governor of Goa.

Vivek B. Kamat, Director & ex officio Addl. Secretary (Technical Education).

Porvorim, 24th September, 2019.

Department of Home

Home—General Division

Addendum

No. 24/11/2011-HD(G)/2482

Read: Order No. 24/11/2011-HD(G)/2226 dated 05-08-2019.

In the above referred order, the following para shall be inserted after the first para:-

"The expenditure shall be debited to the Budget Head 2014—Admn of Justice, 00, 800—Other Expenditure, 01—Establishment of Fast Track Court North/South (Plan), 01—Salaries (voted)", under Demand No. 03.

The rest of the contents of the above referred order shall remain unchanged.

By order and in the name of the Governor of Goa.

Nilesh K. Dhaigodkar, Under Secretary (Home).

Porvorim, 13th September, 2019.

Department of Industries**Order**

No. 3/3/2018-IND/516/334

Ms. Nidhi Satija, IES, Joint Secretary (Budget), Government of Goa shall hold additional charge of the post of Chief Executive Officer, Goa Investment Promotion and Facilitation Board (Goa-IPB) and Chief Executive Officer, Start-up Promotion Cell with immediate effect in addition to her own duties.

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Industries).

Porvorim, 23rd September, 2019.

Order

No. 3/3/2018-IND/517/535

Government is pleased to accept the resignation of Shri Vishal Prakash, Chief Executive Officer, Goa Investment Promotion and Facilitation Board (Goa-IPB) tendered by him vide letter dated 10-09-2019

and he stands relieved from the post of Chief Executive Officer with immediate effect.

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Industries).

Porvorim, 23rd September, 2019.

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Department of Information and Publicity

Order

No. DI/INF/ESG/IFFI/05/Part-I/2040

In pursuance of the provisions of Clause 5 of Chapter II of the Rules and Regulations of Entertainment Society of Goa, the Government of Goa is pleased to reconstitute the General Body of the Entertainment Society of Goa (ESG) having office at Old GMC Complex, Panaji-Goa with following composition with immediate effect:

Sr. No.	Category of appointment of Member	Composition of the General Body
1	2	3
1.	Chief Minister of the State (ex officio Chairperson)	Dr. Pramod Sawant, Hon'ble Chief Minister-Chairperson.
2.	Vice Chairperson	Shri Subhash Phal Dessai-Vice Chairperson.
3.	Member Secretary	Chief Executive Officer of ESG.
4.	12 representatives from Government Departments including two from Departments of Government of India	1. Chief Secretary, Goa. 2. Finance Secretary, Goa. 3. Secretary (Information & Publicity), Goa. 4. Director (Art & Culture), Goa. 5. Director (Information & Publicity), Goa. 6. Chairman, Economic Development Corporation. 7. Chairman, Goa Tourism Development Corporation. 8. Shri Shubham Chodankar, Corporator, a representative of the Corporation of City of Panaji. 9. Shri Josua Desouza, MLA Mapusa. 10. Smt. Alina Saldanha, MLA Cortalim. 11. Nominee-To be appointed by Government of India. 12. Nominee-To be appointed by Government of India.
5.	03 persons from other similar Societies or autonomous bodies	1. Shri Pravin Zantye. 2. Shri Purnanand Chari. 3. Dr. Rajay Pawar.
6.	03 persons having proven track record in the field of films	1. Shri Sharmad Raiturkar. 2. Shri Dhyaneshwar Moghe. 3. Shri Shiva Baba Naik.
7.	03 eminent persons in the field of entertainment	1. Shri Sanjay Shetye. 2. Shri Devidas Amonkar. 3. Shri Abhay Jog.
8.	05 persons who in the view of the Government is worthy of helping Society to realize its objectives	1. Shri Sushant Khedekar. 2. Shri Shantaram Kundaikar. 3. Shri Raju Nayak.

1	2	3
		4. Shri Ramrao Wagh. 5. Shri William D'Costa.

The General Body of the Entertainment Society of Goa shall exercise the powers and functions as specified under the Rules and Regulations of the Entertainment Society of Goa and also as per the mandate provided by the State Government/ESG from time to time.

The tenure of the General Body shall be for a period of three years from the date of issue of this order. The Chairperson, Member Secretary and Members will be eligible for re-appointment. However, the State Government shall have the authority to terminate the membership of any member including the Member Secretary at any time.

By order and in the name of the Governor of Goa.

Meghana Shetgaonkar, Director & ex officio Jt. Secretary (Information and Publicity).

Panaji, 19th September, 2019.

Order

No. DI/INF/ESG/IFFI/05/Part-I/2041

In pursuance of the provisions of Clause 6 of Chapter II of the Rules and Regulations of Entertainment Society of Goa, the Government of Goa is pleased to reconstitute the Governing Body/Executive Council of the Entertainment Society of Goa (ESG) having office at Old GMC Complex, Panaji-Goa with following composition with immediate effect:

Sr. No.	Category of appointment of Member	Composition of the Executive Body
1	2	3
1. Chairperson of the Executive Council		Shri Subhash Phal Dessai, Chairperson.
2. Member Secretary of Executive Council (ex officio Member Secretary)		Chief Executive Officer of ESG, ex officio Member Secretary.
3. 05 representatives from amongst official members of the General Body		1. Chief Secretary, Goa. 2. Finance Secretary, Goa. 3. Secretary (Information & Publicity), Goa. 4. Director (Art & Culture), Goa. 5. Director (Information & Publicity), Goa.
4. 04 non-official members from amongst the non-official members of the General Body		1. Shri Sushant Khedekar. 2. Shri Shantaram Kundaikar. 3. Shri Shiva Baba Naik. 4. Shri Sharmad Raiturkar.
5. 06 Special Invitees		1. Shri Pravin Zantye. 2. Shri William Costa. 3. Shri Dhyaneshwar Moghe. 4. Shri Abhay Jog. 5. Shri Raju Nayak. 6. Shri Ramrao Wagh.

The Executive Council of the Entertainment Society of Goa shall exercise the powers and functions as specified under the Rules and Regulations of the Entertainment Society of Goa and also as per the mandate provided by the State Government/ESG from time to time.

The tenure of the Executive Council shall be for a period of three years from the date of issue of this order. The Chairperson, Member Secretary and Members will be eligible for re-appointment. However, the State Government shall have the authority to terminate the membership of any member including the Member Secretary at any time.

By order and in the name of the Governor of Goa.

Meghana Shetgaonkar, Director & ex officio Jt. Secretary (Information and Publicity).

Panaji, 19th September, 2019.

Department of Labour

Notification

No. 28/2/2019-LAB/553

The following Interim award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 23-07-2019 in reference No. IT/18/17 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 17th September, 2019.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT

GOVERNMENT OF GOA AT PANAJI

(Before Mr. Vincent D'Silva, Hon'ble Presiding Officer)

Ref. No. IT/18/17

Workmen,

Rep. by the General Secretary,

Gomantak Mazdoor Sangh,

G-5, Macedo Apartments,

Tisk, Ponda, Goa-403 401. ... Workmen/Party I

V/s

1. M/s. Orchid Biomedical System,
Division of Tulip Diagnostics (P) Ltd.,
Verna Industrial Estate, Verna,
Salcete, Goa-403 722 ... Employer/Party II(1)

2. Goa Trade & Commercial Workers Union,
Velho's Bldg., 2nd Floor,
Panaji, Goa-403 001. ... Workmen/Party II(2)

Workmen/Party I represented by Shri P. Gaonkar
along with Ld. Adv. Shri S. P. Gaonkar.

Employer/Party II(1) represented by Ld. Adv. Shri
M. S. Bandodkar.

Workmen/Party II(2) represented by Ld. Adv. Shri
Suhaas Naik.

INTERIM AWARD

(Delivered on this the 23rd day of the month
of July, of the year 2019).

This Order shall dispose of the application at
Exh. 8 filed by the Party I for interim relief.

2. Briefly stated, the case of the Party I is as
follows:

That the current wages of the workmen involved
in the present reference are meager and not

sufficient for day-to-day needs of average family as seen from the wage slips produced along with the claim statement. The cost of living and so also the consumer price index have been rising exponentially over the last years; however, the wages have not increased commensurate to the rise in the consumer price index. The current wage structure does not provide for any increase in relation to the increase in the cost of living index. There is no variable dearness allowance being paid to the workers. Whenever there is an increase in the cost of living, the workers are entitled to an increase in the salary so that the inflation does not cut into their purchasing power. Balance of convenience lies in favour of workmen since the wages are in serious need of revision. The employer had already thought it convenient to negotiate with a particular handpicked union and entered into an unfair settlement by ignoring the workers concerned in the reference whose wages remained stagnant. If the interim increase is not granted, the financial difficulties faced by the workmen would continue and would result in their economic deprivation and therefore to avoid any cascading effect on the lives of the workmen, the financial deprivation must be temporarily put to an halt. No prejudice would be caused to the employer, if the application is allowed as they are liable to pay wages commensurate to the cost of living reflecting the ever rising inflation and therefore a sum of Rs. 6500/- as interim increase in wages per workman be allowed.

3. The Party II(1) filed a reply inter-alia contention that the application is bad in law and not maintainable and filed by a section of workers which would amount to discrimination between the workers. The Party I workers did not come with clean hands as the Party I are representing some of the workers without specifying which workers are required to be paid. The company is having majority union known as Goa Trade & Commercial Workers Union and has signed comprehensive settlement dated 9-8-2017 on the Charter of demands dated 22-2-2017 under Section 2(p) read with Section 18(1) of the Act and offered benefits to the minority union and some of the members of the said union accepted the settlement but the Party I have not accepted the settlement and have not been giving the productivity as agreed in the said settlement. There is no justification given for interim relief of Rs. 6500/- per month. The union has no locus standi to file the application for interim relief. The Party II have given substantial rise to all the workers who have signed the settlement and the Party I have refused to accept

the benefits of the said settlement and therefore there is no scope for asking for interim relief. No case has been made out by Party I for grant of the application. No prejudice would be caused to Party I and therefore the application be dismissed.

4. Heard arguments. Notes of Written arguments came to be placed on record by Party I as well as Party II(1).

5. Learned Adv. Shri S. P. Gaonkar for Party I has submitted that the current wages of the workmen involved in the present reference are meager and not sufficient for day-to-day needs of an average family as seen from the wage slips. The inflation reduces the real value of Rupee and said factors along with rising Consumer Price Index have to be considered. The real value of the workmen's salary in 2018 is Rs. 16,890/- and therefore in real value terms the increase is mere Rs. 1850/- for the year 2018 to 2019, Rs. 1850/- for 2019 to 2020 and Rs. 2150/- from April, 2020 to September, 2020 and that is the future increase of Rs. 5850/- on September, 2020 and therefore the salary which is currently around Rs. 19,000/- would increase to Rs. 24,850/- which clearly shows that the purchasing power of the pay package will go on reducing in coming future even if the rate of inflation does not increase. The cost of living so also consumer price index has been rising exponentially over the last years, however the wages have not increased. The current wage structure does not provide for any increase in relation to the increase in the cost of living index. There are no variable dearness allowances being paid to the workers. He further submitted that the Apex Court in the case of **Hindustan Lever Ltd. vs. B. N. Dongre, (1994) 6 SCC 157** has observed that if the rise in the pay packet does not keep pace with the rise in prices of essentials, the purchasing power of the pay packet falls reducing the real wages leaving the workers and their families worse off and therefore, if on account of inflation, prices rise while the pay packet remains frozen, the real wages will fall sharply. He further submitted that the balance of convenience for grant of interim increase lies in favour of the workmen since their wages are in serious need of revision. The employer has already thought it convenient to negotiate only with a particular handpicked union and entered into unfair settlement and if interim increase is not granted, the financial difficulties faced by the workmen would continue and result in economic deprivation. No prejudice would cause to the employer since it is its duty to treat all the workmen fairly and reasonably and therefore the application be allowed.

6. Per contra, Ld. Adv. Shri M. S. Bandodkar for Party II(1) has submitted that the Court can pass interim award only as per Section 2(b) of the Act and an interim award can be granted only on the basis of subject matter of reference and in support thereof, he relied upon the case of **Maharashtra Girls Education Society, Pune vs. Maharashtra Karmachari Sanghatana, Pune, (2018) III CLR 601**. He further submitted that the Party II(1) and Party II(2) have signed a settlement with vast majority of workers on their Charter of demands on 22-2-2017 and the said settlement has been signed on 9-8-2017 and accepted by the majority of members of union without any exception by all the establishments of Party II(1) and that the said settlement is fair and reasonable and the settlement signed by the majority has to be accepted by the minority. The Party I have not accepted the settlement and that they are not giving the productivity as agreed as per clause 19 of the settlement and therefore not entitled for any interim reliefs. In support thereof, he relied upon the cases of **Tata Engineering and Locomotive Co. Ltd. vs. Their workmen, Civil Appeal No. 1484 of 1971 dated 16-10-1981**.

7. It is well settled that the Tribunal has powers to grant interim reliefs in terms of expression 'incidental thereto' occurring in Section 10(4) of Industrial Disputes Act as held in the case of **Management Hotel Imperial, New Delhi and others vs. Hotel Workers Union, 1960 (1) SCR 476**. It is also well established that merely because Court is vested with the powers of granting interim relief in an application under Section 2-A(2) of the Industrial Disputes Act, the same would not relieve Party I from establishing the three preconditions required for seeking such a relief as pointed out in the judgment in the case of **Mahindra & Mahindra Limited vs. Dwarkanath Babaji Dalvi & Anr., 2006 I CLR 902**. The Hon'ble High Court of Calcutta in **Webel Nicco Electronics Ltd. vs. Anima Roy, 1997(II) CLR 158**, has laid down the parameters for grant of interim relief by the Industrial Tribunal. These parameters are (a) prima facie case and (b) balance of convenience.

8. The following points therefore arise for my determinations which are mentioned along with their findings and reasons thereof.

Points	Findings
1. Whether the Party I have made out a prima facie case for grant of relief claimed?	In the Negative
2. Whether irreparable loss and inconvenience would cause to Party I in case of non grant of relief claimed?	In the Negative

POINT 1

9. The present reference is for the Charter of demands raised by the Union vide letter dated 28-11-2016 against the management of M/s. Orchid Biomedical System, a division of Tulip Diagnostic Ltd., Verna Industrial Estate, Verna. There is no dispute that the company has signed five settlements i.e. dated 23-02-2008, 24-01-2011, 22-05-2014, 10-06-2014 and 09-08-2017. In all the settlements, the Party II has given substantial benefits to all workmen and settlement dated 22-05-2014 has been accepted by Gomantak Mazdoor Sangh in toto without making any allegation. There is also no dispute that 2/3rd of the workmen have accepted the settlement dated 09-08-2017 for the period from 01-04-2017 to 30-09-2020. The said settlement signed by the parties is a comprehensive settlement on the Charter of demands dated 22-2-2017 which was signed on 09-08-2017 and accepted by majority members of union by all the establishment of Party II and the said settlement has been offered to all the members of the Party I and some of them have accepted the said settlement.

10. Curiously enough, it is not known how many of the workmen of Party I have raised the present dispute and how many of them have been challenging the said settlement dated 09-08-2017 to be unfair, malafide, unreasonable and against the interest of the workmen. It is also not known nor statement of claim filed on behalf of the Party I workmen show that they are challenging the settlement dated 09-08-2017 entered into by majority union and the Party II. The Party I have also not specified on whose behalf the demands have been raised or whether the said persons are the members of the union nor any list of workmen have been filed nor any resolution seeking to raise demand on the management has been produced nor filed any affidavit in support of its case. The fact remains that the Party I workmen have not accepted the settlement nor they are giving the productivity as agreed as per clause 19 of the settlement. The settlement has been arrived by vast majority of the concerned workers with their eyes open and also accepted by them in its totality, which fact cannot be ignored by the Tribunal as when a recognised union negotiates with the employees, it is expected to protect the best interest of the workers. There are also no allegations of malafide, fraud, corruption or other inducement with respect to the settlement arrived at by the parties and in the absence of the said allegations, it cannot be said that the said settlement is unfair or arbitrary as claimed by Party I in the application

for interim relief nor Party I workers who are in minority have established the case for grant of any reliefs at this stage.

11. Moreover, the terms of said settlement cannot be considered to be in any way ex-facie, unjust or unfair in the absence of challenge to the same as settlement of labour dispute by direct negotiation and collective bargaining is always to be preferred for it is the best guarantee of industrial peace and harmony between the employer and the workmen. The Party II(1) and Party II(2) have signed a comprehensive settlement arising out of the Charter of demands dated 22-2-2017 covering all the demands of Party I, which ensures industrial peace and merely because some of the employees do not agree to the terms of the settlement entered into between the majority union and the employer, they cannot be permitted to contend that it was negotiated with a hand-picked union or that it was an unfair settlement. No such case has been even alleged by the Party I union, much less made out by the Party I in the dispute raised by them before the appropriate authority or in the claim statement or in the application for interim relief. The claim of Party I that the increase in the consumer price index, justifies an upward revision in wages, is not sufficient as by that fact alone, it is not possible to draw an inference that the wages paid is wholly inadequate to meet day to day expenses, in the absence of any evidence to that effect.

12. It requires a mention here that all the establishments of Party II do not work separately as seen from the Balance Sheet which is in the name of Tulip Diagnostics Pvt. Ltd. The establishments as mentioned by the Party I as divisions are not financially independent but they are of the one company viz. Tulip Diagnostics Pvt. Ltd. who has signed the settlements along with all its establishments and are part and parcel of the same company and therefore as rightly pointed out by Ld. Adv. M. S. Bandodkar, the demands raised by the Party I purporting to be on the division of Tulip Diagnostics Pvt. Ltd. is bad in law and the firms viz. Orchids Biomedical Systems, Qualpro Diagnostics, Zephyr Biomedical and Coral Clinical System who were partnership concerns were merged into Tulip Diagnostics Pvt. Ltd. on 30-1-2017 and therefore from 31-1-2017 there are no divisions but only one company known as Tulip Diagnostics Pvt. Ltd. Moreover, the local committee of the union and all other workers have signed and accepted the settlement dated 4-12-2013 with Tulip Diagnostics Pvt. Ltd. and not any division of the said company and have not raised any issue about

the same with the company at any time and as such, the Party I Union cannot claim that the Party II(1) is a division of Tulip Diagnostics Pvt. Ltd. and therefore the claim of the Party I is incapable of being adjudicated and hence, prima facie no relief as been claimed can be granted.

13. Moreover, there are no facts and figures available on record justifying grant of upward wage revision including granting additional basic pay and other emoluments. There is no evidence before the Tribunal in support of the case of Party I that they are entitled for a sum of Rs. 6500/- as interim increase in wages per workman per month nor they have filed an application before the Tribunal for an opportunity to lead evidence. The Party II(1) have raised an issue of jurisdiction and maintainability before grant of interim relief in the matter which requires evidence before deciding the said issue. There also cannot be any dispute that the Party I have accepted the settlement dated 10-06-2014 and as per clause (e) the parties have agreed that during the operative period of the settlement, the union/workmen shall not raise, pursue/agitate any other demands of whatsoever nature entailing additional financial or administrative impact other than what has been agreed in terms of the said settlement. The Party I raised the Charter of demands giving a go-by to the settlement dated 10-06-2014 as in view of the said terms and conditions of the settlement, they were precluded from raising any financial demand till new settlement is signed in accordance with law. It is therefore as rightly submitted by Ld. Adv. M. S. Bhandodkar in view of the said clause of the settlement, the Party I cannot make an application for interim relief. Moreover, there are no materials on record on financial position of the company, industry cum region, paying capacity and comparable concern. The settlements which have been relied upon by the Party I are in no way comparable to the company nor there is anything on record as to how those settlements can be compared with one establishment of the company and therefore the wage structure as sought by the Party I cannot be altered.

14. There are also no materials about the necessities of the workmen, the justification of their demands for living wage or fair wage and the extent thereof in the claim statement as well as application for interim relief. In short, the claim of Rs. 6500/- as interim increase in wages per workman by Party I workmen would put an obligation on Party II to pay increase in wages to Party I workmen without any obligation on the part of the workmen to increase in productivity, which would be

discriminatory and would disturb industrial peace and therefore would not be desirable state of affairs, which is required to be protected to avoid friction and unhealthy litigation. There are absolutely no justifiable reasons given by the Party I as to how they are entitled for said increase in wages. Merely, claiming that the current wages of the workmen is not sufficient for day-to-day needs of the family and that the cost of living, so also the consumer price index has been rising exponentially over the last years is not sufficient. Prima facie therefore, the Party I has failed to show any case in its favour. It is therefore, the point No. 1 is answered in the negative.

POINT 2

15. It is claimed by Party I workmen that the balance of convenience for grant of interim relief is in favour of Party I workmen since their wages are in serious need of revision and that the inflation has cut into their purchasing power. It is also claimed that the workers involved in the reference has been ignored and their wages remained stagnant and if their interim increase is not granted, the workers will face financial difficulties, resulting in economic deprivation and that no prejudice would cause to the employer, if the present application is allowed. However, as rightly pointed out by Ld. Adv. Shri Bhandodkar there is no change in circumstances to warrant the Charter of demands dated 4-12-2013 for revision in wages for 2017 when the settlement dated 10-06-2014 signed by the workers and the management revised the wages till 31-3-2017. Moreover, the workers have refused to give extra productivity which was one of the reasons for increase in wages in 2017 settlement and since the minority union has refused to sign the settlement dated 09-08-2017 and give more productivity as agreed by the majority union, balance of convenience cannot be said to be in favour of the Party I workmen. No irreparable loss would occasion to the Party I workmen as they derive benefits of the settlement dated 10-06-2014 which has revised the wages from 1-1-2013 to 31-3-2017 and unless they accept the settlement and give extra productivity as per the new settlement, irreparable loss would occasion to the Party II(1). There would be also discrimination and industrial unrest, if the demand of interim increase in wages of Rs. 6500/- is granted to the Party I workmen without accepting the settlement and giving productivity as is being done by the majority union in terms of the settlement dated 09-08-2017. No irreparable loss would cause to Party I workmen if reliefs are not granted at this stage as their charter of demands are pending for final

determination on merits. It is therefore the above point No. 2 is answered accordingly.

16. Having said so, I pass the following:

ORDER

- (i) The application filed by Party I for interim relief at Exhibit 8 stands dismissed.
- (ii) No order as to costs.
- (iii) Inform the Government accordingly.

Sd/-

(Vincent D'Silva)
Presiding Officer,
Industrial Tribunal and
Labour Court.

Notification

No. 28/2/2019-LAB/Part-II/554

The following Interim award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 23-07-2019 in reference No. IT/03/18 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).
Porvorim, 17th September, 2019.

**IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT**

GOVERNMENT OF GOA AT PANAJI

**(Before Mr. Vincent D'Silva, Hon'ble Presiding
Officer)**

Ref. No. IT/03/18

Workmen,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
G-5, Macedo Apartments,
Tisk, Ponda, Goa-403 401. ... Workmen/Party I
V/s

1. M/s. Zephyr Biomedicals,
Division of Tulip Diagnostics (P) Ltd.,
Verna Industrial Estate, Verna,
Salcete, Goa-403 722. Employer/Party II(1)
2. Goa Trade & Commercial Workers Union,
Velho's Bldg., 2nd Floor,
Panaji, Goa-403 001. ... Workmen/Party II(2)

Workmen/Party I represented by Shri P. Gaonkar
along with Ld. Adv. Shri S. P. Gaonkar.

Employer/Party II(1) represented by Ld. Adv. Shri
M. S. Bhandodkar.

Workmen/Party II(2) represented by Ld. Adv. Shri
Suhaas Naik.

INTERIM AWARD

**(Delivered on this the 23rd day of the month
of July, of the year 2019).**

This Order shall dispose of the application at
Exh. 9 filed by the Party I for interim relief.

2. Briefly stated, the case of the Party I is as
follows:

That the current wages of the workmen involved in the present reference are meager and not sufficient for day-to-day needs of average family as seen from the wage slips produced along with the claim statement. The cost of living and so also the consumer price index have been rising exponentially over the last years; however, the wages have not increased commensurate to the rise in the consumer price index. The current wage structure does not provide for any increase in relation to the increase in the cost of living index. There is no variable dearness allowance being paid to the workers. Whenever there is an increase in the cost of living, the workers are entitled to an increase in the salary so that the inflation does not cut into their purchasing power. Balance of convenience lies in favour of workmen since the wages are in serious need of revision. The employer had already thought it convenient to negotiate with a particular handpicked union and entered into an unfair settlement by ignoring the workers concerned in the reference whose wages remained stagnant. If the interim increase is not granted, the financial difficulties faced by the workmen would continue and would result in their economic deprivation and therefore to avoid any cascading effect on the lives of the workmen, the financial deprivation must be temporarily put to an halt. No prejudice would be caused to the employer, if the application is allowed as they are liable to pay wages commensurate to the cost of living reflecting the ever rising inflation and therefore a sum of Rs. 6500/- as interim increase in wages per workman be allowed.

3. The Party II(1) filed a reply inter-alia contention that the application is bad in law and not maintainable and filed by a section of workers which would amount to discrimination between the workers. The Party I workers did not come with clean hands as the Party I are representing some of the workers without specifying which workers are required to be paid. The company is having majority union known as Goa Trade & Commercial Workers Union and has signed comprehensive

Settlement dated 9-8-2017 on the Charter of demands dated 22-2-2017 under Section 2(p) read with Section 18(1) of the Act and offered benefits to the minority union and some of the members of the said union accepted the settlement but the Party I have not accepted the settlement and have not been giving the productivity as agreed in the said settlement. There is no justification given for interim relief of Rs. 6500/- per month. The union has no locus standi to file the application for interim relief. The Party II have given substantial rise to all the workers who have signed the settlement and the Party I have refused to accept the benefits of the said settlement and therefore there is no scope for asking for interim relief. No case has been made out by Party I for grant of the application. No prejudice would be caused to Party I and therefore the application be dismissed.

4. Heard arguments. Notes of Written arguments came to be placed on record by Party I as well as Party II(1).

5. Learned Adv. Shri S. P. Gaonkar for Party I has submitted that the current wages of the workmen involved in the present reference are meager and not sufficient for day-to-day needs of an average family as seen from the wage slips. The inflation reduces the real value of Rupee and said factors along with rising Consumer Price Index have to be considered. The real value of the workmen's salary in 2018 is Rs. 16,890/- and therefore in real value terms the increase is mere Rs. 1850/- for the year 2018 to 2019, Rs. 1850/- for 2019 to 2020 and Rs. 2150/- from April, 2020 to September, 2020 and that is the future increase of Rs. 5850/- on September, 2020 and therefore the salary which is currently around Rs. 19,000/- would increase to Rs. 24,850/- which clearly shows that the purchasing power of the pay package will go on reducing in coming future even if the rate of inflation does not increase. The cost of living so also consumer price index has been rising exponentially over the last years, however the wages have not increased. The current wage structure does not provide for any increase in relation to the increase in the cost of living index. There are no variable dearness allowances being paid to the workers. He further submitted that the Apex Court in the case of **Hindustan Lever Ltd. vs. B. N. Dongre, (1994) 6 SCC 157** has observed that if the rise in the pay packet does not keep pace with the rise in prices of essentials, the purchasing power of the pay packet falls reducing the real wages leaving the workers and their families worse off and therefore, if on account of inflation, prices rise while the pay packet remains frozen, the real wages will fall sharply. He further

submitted that the balance of convenience for grant of interim increase lies in favour of the workmen since their wages are in serious need of revision. The employer has already thought it convenient to negotiate only with a particular handpicked union and entered into unfair settlement and if interim increase is not granted, the financial difficulties faced by the workmen would continue and result in economic deprivation. No prejudice would cause to the employer since it is its duty to treat all the workmen fairly and reasonably and therefore the application be allowed.

6. Per contra, Ld. Adv. Shri M. S. Bandodkar for Party II(1) has submitted that the Court can pass interim award only as per Section 2(b) of the Act and an interim award can be granted only on the basis of subject matter of reference and in support thereof, he relied upon the case of **Maharashtra Girls Education Society, Pune vs. Maharashtra Karmachari Sanghatana, Pune, (2018) III CLR 601**. He further submitted that the Party II(1) and Party II(2) have signed a settlement with vast majority of workers on their Charter of demands on 22-2-2017 and the said settlement has been signed on 9-8-2017 and accepted by the majority of members of union without any exception by all the establishments of Party II(1) and that the said settlement is fair and reasonable and the settlement signed by the majority has to be accepted by the minority. The Party I have not accepted the settlement and that they are not giving the productivity as agreed as per clause 19 of the settlement and therefore not entitled for any interim reliefs. In support thereof, he relied upon the cases of **Tata Engineering and Locomotive Co. Ltd. vs. Their workmen, Civil Appeal No. 1484 of 1971 dated 16-10-1981**.

7. It is well settled that the Tribunal has powers to grant interim reliefs in terms of expression 'incidental thereto' occurring in Section 10(4) of Industrial Disputes Act as held in the case of **Management Hotel Imperial, New Delhi and others vs. Hotel Workers Union, 1960 (1) SCR 476**. It is also well established that merely because Court is vested with the powers of granting interim relief in an application under Section 2-A(2) of the Industrial Disputes Act, the same would not relieve Party I from establishing the three preconditions required for seeking such a relief as pointed out in the judgment in the case of **Mahindra & Mahindra Limited vs. Dwarkanath Babaji Dalvi & Anr., 2006 I CLR 902**. The Hon'ble High Court of Calcutta in **Webel Nicco Electronics Ltd. vs. Anima Roy, 1997(II) CLR 158**, has laid down the parameters for

grant of interim relief by the Industrial Tribunal. These parameters are (a) prima facie case and (b) balance of convenience.

8. The following points therefore arise for my determinations which are mentioned along with their findings and reasons thereof.

Points	Findings
1. Whether the Party I have made out a prima facie case for grant of relief claimed?	In the Negative
2. Whether irreparable loss and inconvenience would cause to Party I in case of non grant of relief claimed?	In the Negative

POINT 1

9. The present reference is for the Charter of demands raised by the Union vide letter dated 28-11-2016 against the management of M/s. Zephyr Biomedicals, a division of Tulip Diagnostic Ltd., Verna Industrial Estate, Verna. There is no dispute that the company has signed five settlements i.e. dated 23-02-2008, 24-01-2011, 22-05-2014, 10-06-2014 and 09-08-2017. In all the settlements, the Party II has given substantial benefits to all workmen and settlement dated 22-05-2014 has been accepted by Gomantak Mazdoor Sangh in toto without making any allegation. There is also no dispute that 2/3rd of the workmen have accepted the Settlement dated 09-08-2017 for the period from 01-04-2017 to 30-09-2020. The said settlement signed by the parties is a comprehensive settlement on the Charter of demands dated 22-2-2017 which was signed on 09-08-2017 and accepted by majority members of union by all the establishment of Party II and the said settlement has been offered to all the members of the Party I and some of them have accepted the said settlement.

10. Curiously enough, it is not known how many of the workmen of Party I have raised the present dispute and how many of them have been challenging the said Settlement dated 09-08-2017 to be unfair, malafide, unreasonable and against the interest of the workmen. It is also not known nor statement of claim filed on behalf of the Party I workmen show that they are challenging the Settlement dated 09-08-2017 entered into by majority union and the Party II. The Party I have also not specified on whose behalf the demands have been raised or whether the said persons are the members of the union nor any list of workmen have been filed nor any resolution seeking to raise demand on the management has been produced

nor filed any affidavit in support of its case. The fact remains that the Party I workmen have not accepted the settlement nor they are giving the productivity as agreed as per clause 19 of the settlement. The settlement has been arrived by vast majority of the concerned workers with their eyes open and also accepted by them in its totality, which fact cannot be ignored by the Tribunal as when a recognised union negotiates with the employees, it is expected to protect the best interest of the workers. There are also no allegations of malafide, fraud, corruption or other inducement with respect to the settlement arrived at by the parties and in the absence of the said allegations, it cannot be said that the said settlement is unfair or arbitrary as claimed by Party I in the application for interim relief nor Party I workers who are in minority have established the case for grant of any reliefs at this stage.

11. Moreover, the terms of said settlement cannot be considered to be in any way ex-facie, unjust or unfair in the absence of challenge to the same as settlement of labour dispute by direct negotiation and collective bargaining is always to be preferred for it is the best guarantee of industrial peace and harmony between the employer and the workmen. The Party II(1) and Party II(2) have signed a comprehensive settlement arising out of the Charter of demands dated 22-2-2017 covering all the demands of Party I, which ensures industrial peace and merely because some of the employees do not agree to the terms of the settlement entered into between the majority union and the employer, they cannot be permitted to contend that it was negotiated with a hand-picked union or that it was an unfair settlement. No such case has been even alleged by the Party I union, much less made out by the Party I in the dispute raised by them before the appropriate authority or in the claim statement or in the application for interim relief. The claim of Party I that the increase in the consumer price index, justifies an upward revision in wages, is not sufficient as by that fact alone, it is not possible to draw an inference that the wages paid is wholly inadequate to meet day to day expenses, in the absence of any evidence to that effect.

12. It requires a mention here that all the establishments of Party II do not work separately as seen from the Balance Sheet which is in the name of Tulip Diagnostics Pvt. Ltd. The establishments as mentioned by the Party I as divisions are not financially independent but they are of the one company viz. Tulip Diagnostics Pvt. Ltd. who has signed the settlements along with all

its establishments and are part and parcel of the same company and therefore as rightly pointed out by Ld. Adv. M. S. Bandodkar, the demands raised by the Party I purporting to be on the division of Tulip Diagnostics Pvt. Ltd. is bad in law and the firms viz. Orchids Biomedical Systems, Qualpro Diagnostics, Zephyr Biomedical and Coral Clinical System who were partnership concerns were merged into Tulip Diagnostics Pvt. Ltd. on 30-1-2017 and therefore from 31-1-2017 there are no divisions but only one company known as Tulip Diagnostics Pvt. Ltd. Moreover, the local committee of the union and all other workers have signed and accepted the Settlement dated 4-12-2013 with Tulip Diagnostics Pvt. Ltd. and not any division of the said company and have not raised any issue about the same with the company at any time and as such, the Party I Union cannot claim that the Party II(1) is a division of Tulip Diagnostics Pvt. Ltd. and therefore the claim of the Party I is incapable of being adjudicated and hence, *prima facie* no relief as been claimed can be granted.

13. Moreover, there are no facts and figures available on record justifying grant of upward wage revision including granting additional basic pay and other emoluments. There is no evidence before the Tribunal in support of the case of Party I that they are entitled for a sum of Rs. 6500/- as interim increase in wages per workman per month nor they have filed an application before the Tribunal for an opportunity to lead evidence. The Party II(1) have raised an issue of jurisdiction and maintainability before grant of interim relief in the matter which requires evidence before deciding the said issue. There also cannot be any dispute that the Party I have accepted the Settlement dated 10-06-2014 and as per clause (e) the parties have agreed that during the operative period of the settlement, the union/workmen shall not raise, pursue/agitate any other demands of whatsoever nature entailing additional financial or administrative impact other than what has been agreed in terms of the said settlement. The Party I raised the Charter of demands giving a go-by to the Settlement dated 10-06-2014 as in view of the said terms and conditions of the settlement, they were precluded from raising any financial demand till new settlement is signed in accordance with law. It is therefore as rightly submitted by Ld. Adv. M. S. Bandodkar in view of the said clause of the settlement, the Party I cannot make an application for interim relief. Moreover, there are no materials on record on financial position of the company, industry cum region, paying capacity and comparable concern. The settlements which have

been relied upon by the Party I are in no way comparable to the company nor there is anything on record as to how those settlements can be compared with one establishment of the company and therefore the wage structure as sought by the Party I cannot be altered.

14. There are also no materials about the necessities of the workmen, the justification of their demands for living wage or fair wage and the extent thereof in the claim statement as well as application for interim relief. In short, the claim of Rs. 6500/- as interim increase in wages per workman by Party I workmen would put an obligation on Party II to pay increase in wages to Party I workmen without any obligation on the part of the workmen to increase in productivity, which would be discriminatory and would disturb industrial peace and therefore would not be desirable state of affairs, which is required to be protected to avoid friction and unhealthy litigation. There are absolutely no justifiable reasons given by the Party I as to how they are entitled for said increase in wages. Merely, claiming that the current wages of the workmen is not sufficient for day-to-day needs of the family and that the cost of living, so also the consumer price index has been rising exponentially over the last years is not sufficient. *Prima facie* therefore, the Party I has failed to show any case in its favour. It is therefore, the point No. 1 is answered in the negative.

POINT 2

15. It is claimed by Party I workmen that the balance of convenience for grant of interim relief is in favour of Party I workmen since their wages are in serious need of revision and that the inflation has cut into their purchasing power. It is also claimed that the workers involved in the reference has been ignored and their wages remained stagnant and if their interim increase is not granted, the workers will face financial difficulties, resulting in economic deprivation and that no prejudice would cause to the employer, if the present application is allowed. However, as rightly pointed out by Ld. Adv. Shri Bandodkar there is no change in circumstances to warrant the Charter of demands dated 4-12-2013 for revision in wages for 2017 when the settlement dated 10-06-2014 signed by the workers and the management revised the wages till 31-3-2017. Moreover, the workers have refused to give extra productivity which was one of the reasons for increase in wages in 2017 settlement and since the minority union has refused to sign the settlement dated 09-08-2017 and give more productivity as agreed by the majority union,

balance of convenience cannot be said to be in favour of the Party I workmen. No irreparable loss would occasion to the Party I workmen as they derive benefits of the Settlement dated 10-06-2014 which has revised the wages from 1-1-2013 to 31-3-2017 and unless they accept the settlement and give extra productivity as per the new settlement, irreparable loss would occasion to the Party II(1). There would be also discrimination and industrial unrest, if the demand of interim increase in wages of Rs. 6500/- is granted to the Party I workmen without accepting the settlement and giving productivity as is being done by the majority union in terms of the Settlement dated 09-08-2017. No irreparable loss would cause to Party I workmen if reliefs are not granted at this stage as their charter of demands are pending for final determination on merits. It is therefore the above point No. 2 is answered accordingly.

16. Having said so, I pass the following:

ORDER

- (i) The application filed by Party I for interim relief at Exhibit 9 stands dismissed.
- (ii) No order as to costs.
- (iii) Inform the Government accordingly.

Sd/-
(Vincent D'Silva)
Presiding Officer,
Industrial Tribunal and
Labour Court.

Notification

No. 28/2/2019-LAB/Part-IV/558

The following award passed by the Labour Court-II, at Panaji-Goa on 15-07-2019 in Case No. LC-II/IT/12/15 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).
Porvorim, 17th September, 2019.

THE LABOUR COURT-II
GOVERNMENT OF GOA AT PANAJI
(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. LC-II/IT/12/15

Shri Francis Fernandes,
R/o. H. No. 275, Kadsal,

Khandepar Bazar,
Ponda-Goa. ... Workmen/Party I
V/s
M/s. Goa Meat Complex Ltd.,
Marvasada, Usgaon-Goa. ... Employer/Party-II
Party-I/Workman represented by Adv. Shri D. Naik.
Party-II/Employer represented by Adv. Shri J. Lobo.
Panaji, Dated: 15-07-2019.

AWARD

1. In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by Order dated 01-07-2015, bearing No. 28/26/2015-Lab/665, referred the following dispute for its adjudication to this Labour Court II, Panaji-Goa.

"(1) Whether the action of M/s. Goa Meat Complex Limited, Marvasada, Usgao, Goa, in terminating the services of Shri Francis Fernandes, Butcher/Worker, with effect from 16-05-2013, is legal and justified?"

(2) If not, what relief the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. LC-II/IT/12/15 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Workman/Party-I (for short, 'the Workman') filed his Statement of Claim on 20-08-2015 at Exhibit-5. The Workman stated that he was employed with the Employer/Party-II (for short "the Employer") w.e.f. April, 2009 in the capacity of 'Butcher/Worker' in its slaughter operations. He stated that he was in continuous service with the Employer from April, 2009. He stated that his services were illegally terminated by the Employer w.e.f. 16-05-2013 by its order dated 10-05-2013 on the ground that the Hon'ble High Court of Bombay at Goa has passed an interim order on 30-04-2013. He stated that by the said order the Hon'ble High Court of Bombay at Goa stated that the slaughter of animals in the abattoir at GMCL has been kept in abeyance. He stated that he used to work even on Sundays and the Employer used to pay him from petty cash and the accounts department of the Employer used to take his signature on the voucher. He stated that the said vouchers are in power and possession of the Employer. He stated that the Employer used to make payment for working on Sundays apart from his monthly salary.

3. He stated that he was shocked and shattered that the Employer without following the principles

of natural justice and without his any fault abruptly and illegally terminated his services with immediate effect vide order dated 10-05-2013. He submitted that the illegal and arbitrary action of the Employer amounts to unfair labour practice. He submitted that he made several requests to the Employer to take him back in service but no heed was paid to his request. He submitted that he is now unemployed and has a dependent family to support and is in great financial difficulty to meet both the ends. He submitted that the arbitrary action of the Employer is totally illegal, unjustified and contrary to law and without following the principles of natural justice. The Workman therefore prayed that the action of the Employer in terminating his services be declared as illegal and unjustified and be reinstated him in service with full back wages and continuity in service. The workman also prayed for regularization of his services.

4. The Employer resisted the claim of the Workman by filing its written statement on 04-11-2015 at Exb. 10. The Employer denied that the workman was employed with them at its establishment at Usgao, Ponda, Goa w.e.f. April, 2009 in the capacity of 'Butcher/Worker' in its slaughter operations. The Employer stated that the Workman has attempted to disguise himself as a permanent employee, when in fact his services were used in its establishment on a purely daily rated basis as and when required. The Employer denied that the workman was in continuous service with them from April, 2009. The Employer stated that the services of the workman were legally terminated by them w.e.f. 16-05-2013 vide its order dated 10-05-2013 due to the interim order of the Hon'ble High Court of Bombay at Goa dated 30-04-2013. The Employer stated that the Hon'ble High Court of Bombay at Goa vide its order dated 30-04-2013 directed them to suspend operation within its premises. The Employer stated that the said notice of termination dated 10-05-2013 is legal. The Employer stated that as the workman was a daily wage worker and his services were used only as and when they were required by them and as such the termination of services of the workman was entirely valid. The Employer submitted that the termination of services of a daily wage worker does not require application of principles of natural justice as such a termination is an administrative action and not a judicial/quasi-judicial action. The Employer admitted that they used to maintain an attendance register manually and then began to maintain the attendance register via biometric register. The Employer denied the overall case as

pleaded by the Workman and prayed for dismissal of the present reference.

5. Thereafter, the Workman filed his rejoinder on 21-03-2016 at Exb. 11. The Workman, by way of his re-joinder, confirms and reiterates all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in the Written Statement, which are contrary to the statements and averments made by him.

6. Based on the pleadings filed by the respective parties, this court framed the following issues on 28-07-2016 at Exb. 13.

1. Whether the Workman/Party-I proves that he was employed with the Employer/Party II w.e.f. April, 2009 in the capacity of Butcher/Worker?
2. Whether the Workman/Party-I proves that the action of the Employer/Party II in terminating his services w.e.f. 16-05-2013 is illegal and unjustified?
3. Whether the Workman/Party-I is entitled to any relief?
4. What order? What award?

7. My findings to the aforesaid issues are as under:

- (a) Issue No. 1 : In the Affirmative.
- (b) Issue No. 2 : In the Affirmative.
- (c) Issue No. 3 & 4 : As per final order.

I have heard the oral arguments of Ld. Adv. Shri D. Naik, appearing for the Workman as well as Ld. Adv. Shri J. Lobo, appearing for the Employer. Ld. Adv. Shri D. Naik, appearing for the workman, chose to file synopsis of written arguments.

8. Ld. Adv. Shri D. Naik, appearing for the workman, during the course of his oral arguments submitted that the Workman was employed by the Employer at its establishment at Usgao, Ponda, Goa, w.e.f. April, 2009 in the capacity of 'Butcher/Worker'. He submitted that the workman was in continuous service with the Employer from April, 2009 till his services has been illegally terminated by the Employer w.e.f. 16-05-2013 vide its order dated 10-05-2013. He submitted that before terminating services of the workman, neither he was issued any show-cause notices or charge-sheet, nor conducted any enquiry. He submitted that the services of the workman have been terminated on the ground that the Hon'ble High Court of Bombay at Goa had passed an interim order on 30-04-2013 wherein the slaughter of animals in the abattoir at

GMCL has kept in abeyance. He submitted that the division bench of Hon'ble High Court of Bombay at Goa had passed an order dated 26-06-2013 allowing the operation in the establishment of the Employer. He submitted that the workman had completed 240 days continuous service in the preceding 12 months from the date of his termination w.e.f. 16-05-2013. He submitted that the services of the workman have been terminated without giving him a one months' notice or in lieu of pay of months' notice and without paying him any retrenchment compensation, thereby violated Section 25-F of the I.D. Act, 1947. He submitted that the Employer had published an advertisement in the local newspaper for the vacant post of butcher, production helper/attendant. He submitted that the aforesaid acts on the part of the Employer amounts to violation of Section 25-G and Section 25-H of the I.D. Act, 1947. He therefore submitted that the action of the Employer in terminating the services of the Workman is illegal and unjustified. In support of his oral contentions, he relied upon three judgments, one in case of **Director, Food and Supplies, Punjab and others v/s Prakash Singh and Ors.**, reported in 2012-III, LLJ 378 (P & H) of Hon'ble High Court of Punjab and Haryana, second in the case of **Sanjeevan Gramin Vaidyakiya & Samajik Sahayata Pratisthan through its Chairman and Ors. v/s. Gorakhnath Popat Bandhane and Ors.**, reported in 2012 (IV) LLJ 23 of Hon'ble High Court of Bombay and third in the case of **State of Gujrat v/s PWD and Forest Employees Union and Ors.**, reported in 2019 1 CLR 862 of Hon'ble Supreme Court of India. He submitted that the workman is unemployed from the date of his illegal termination. He submitted that since the workman was working with the Employer since April, 2009 till the date of his termination w.e.f. 16-05-2013, he may be reinstated in service with full back wages and consequential benefits thereof. He submitted that the Workman was working on daily wage basis since the date of his appointment from April, 2009 till the date of his termination w.e.f. 16-05-2013 and hence, his services shall be regularised. In support of his oral contention, he relied upon three judgments of Hon'ble Apex Court, one in the case of **Sheo Narain Nagar and Ors. v/s. State of Uttar Pradesh and Anr.**, reported in (2018) 13 SCC 432, second in the case of **ONGC Ltd v/s. Petroleum Coal Labour Union and Ors.**, reported in 2015 (4) ALL MR 476 (S.C.) and third in the case of **State of Gujrat v/s. PWD and Forest Employee Union and Ors.**, reported in 2019 CLR 862.

9. Per contra, Ld. Adv. Shri J. Lobo representing the Employer, during the course of his oral arguments submitted that the workman was working with the Employer since April, 2009 in the capacity of Butcher/Worker in its establishment. He submitted that the services of the workman was terminated by them w.e.f. 16-05-2013 vide order dated 10-05-2013 due to the interim order of the Hon'ble High Court of Bombay at Goa dated 30-04-2013 which directed them to suspend operations within its premises. He submitted that as the workman was appointed as daily wage worker and not its employee permanent or otherwise, his services was terminated by order dated 10-05-2013 w.e.f. 16-05-2013. He submitted that the services of the workman was never regularised as he was not qualified for any job with them. He submitted that the termination order dated 10-05-2013 issued to the workman is just, legal and proper. He submitted that as the workman was working as daily wage worker, he was not entitled for any retrenchment compensation etc. as provided u/s 25-F of the I.D. Act, 1947 nor required the application of principles of natural justice. In support of his oral submissions, he relied upon a judgment in the case of **State of Karnataka v/s. Uma Devi**, reported in (2006) 4 SCC 1 of Hon'ble Supreme Court of India.

REASONS:

10. Issue No. 1:

The burden was cast on the workman to prove the issue No. 1. The Workman examined himself to prove his case and produced on record certain documentary evidence in support of his oral evidence. The Workman produced on record copies of extract of attendance register/muster roll for the period from April, 2009 to March, 2013 (Exb. 17-colly) and copies of extract of wage register/salary statements for the period from April, 2009 till May, 2013 (Exb. 18-colly) in support of his oral evidence that he was continuously working with the Employer in the capacity of butcher/worker w.e.f. April, 2009 till termination of his services w.e.f. 16-05-2013. It is therefore held that the workman proved that he was employed with the Employer w.e.f. April, 2009 in the capacity of 'butcher/worker'. The issue No. 1 is therefore answered in the affirmative.

11. Issue No. 2:

While deciding the issue No. 1, I have discussed and come to the conclusion that the Workman was employed with the Employer in the capacity of 'butcher/worker' w.e.f. April, 2009. The evidence on record indicates that the workman was

employed with the Employer continuously on daily wage basis w.e.f. April, 2009 till his services discontinued by the Employer to the effect from 16-05-2013 forenoon vide its order dated 10-05-2013 (Exb. 19).

12. In the case of **Director, Food and Supplies, Punjab and (supra)**, the Hon'ble High Court of Punjab and Haryana has held as under:

"18. A conjoint and meaningful reading of these provisions would reveal that even if a person is engaged on daily wages and has completed the continuous service as defined under Section 25-B, then, his services cannot be terminated without following the statutory provisions of Section 25-F of the Act, irrespective of the fact that he was not appointed against a regular post as alleged on behalf of the management. Therefore, the contrary arguments of learned counsel for the petitioner-management "stricto sensu" liable to be and are hereby repelled under the present set of circumstances."

The principle laid down by the Hon'ble High Court of Punjab and Haryana is well recognized and it is applicable to the case in hand.

13. The Workman claimed that his services have been terminated by the Employer by contending to illegal and arbitrary. Upon careful perusal of the termination order issued to the workman dated 10-05-2013 (Exb. 19), it appears that the slaughter of animals in the abattoir at GMCL has been kept in abeyance, the services of the workman engaged for slaughter operations stands discontinued to take effect from 16-05-2013 forenoon. Thus, the services of the workman have been terminated by the Employer otherwise than as a punishment inflicted by way of disciplinary action. The termination of services of the workman amounts to retrenchment as defined u/s. 2 (oo) of the I.D. Act, 1947. The pre-condition for valid retrenchment has been provided u/s 25-F of the I.D. Act, 1947. Retrenchment of any worker requires the compliance of Section 25-B of the I.D. Act, 1947. The evidence on record indicates that the workman has completed more than 240 days of continuous service from the twelve months preceding the date of his termination i.e. 16-05-2013. The evidence on record indicates that the Workman has not been paid retrenchment compensation nor issued any notice nor paid one month salary in lieu of notice.

14. The workman has produced on record an advertisement published in daily newspaper, namely Navhind Times (Exb. 22), Gomantak (Exb. 23) and Tarun Bharat (Exb. 24) all dated 23-03-2016 calling for applications for the vacant post of

worker/butcher, production helper/attendant etc. The workman has however, did not plead in his pleadings or state on oath that the employer has recruited other persons in his place. Thus, the workman failed to prove that the employer has recruited other person in his place and as such violated Section 25-H of the I.D. Act, 1947. Hence, it is held that the action of the Employer in terminating services of the Workman w.e.f. 16-05-2013 amounts to illegal retrenchment and as such, it is unjustified. The issue No. 2 is therefore answered in the affirmative.

15. Issue No. 3:

While deciding the issue No. 2, I have discussed and come to the conclusion that the action of the Employer in terminating services of the Workman w.e.f. 16-05-2013 is illegal and unjustified. The evidence on record indicates that the Workman is unemployed and have a dependent family to support.

16. In the case of **Sanjeevan Gramin Vaidyakiya & Samajik Sahayata Pratisthan through its Chairman and Ors.(supra)**, the Hon'ble High Court of Bombay has held that "the respondent was working as a Laboratory Assistant with the Appellant and was working for more than five years. His services were terminated without any show-cause notice/memo, much less charges and enquiry. The said termination was set aside by the Labour Court, the respondent therefore filed the present petition. The Hon'ble High Court observed that the management had to disclose the material on which it proceeded and give opportunity to the employee before taking drastic action of termination. The Hon'ble High court further held as under:

"10. No work No wages" should be the formula. It is not necessary in every matter that full back wages should be provided and/or granted. But in case like this and considering the facts and circumstances, where the action of termination as recorded is apparently in breach of the basic principles of natural justice, there is no reason even to interfere with the order of back wages. In every matter through the principle of full back wages need not be followed but at the same time if the action if illegal and in contravention of basic principles, I see there is no reason that the order of back wages as awarded need to be interfered with. Apparently, the respondents and his family suffered because of illegal action. Therefore, taking over all view of the matter, no

interference is called for. The petition is dismissed. Ad-interim order stands vacated. No costs".

The principle laid down by the Hon'ble High Court of Bombay in its aforesaid case is not applicable to the case in hand as the facts of the aforesaid case are totally different then the case in hand.

17. The Hon'ble Apex Court, in its case of **BSNL v/s. Bhurumal, reported in 2013 (15) SCALE 131** has held as under:

"23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular permanent workman are terminated illegally and or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

24. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since, such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (see: State of Karnataka v/s Uma Devi (2006) 4 SCC). Thus, when he cannot claim regularization and he has no right to continue even as a daily wage worker. No useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only

in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement that too after a long gap would not serve any purpose."

The Hon'ble Apex Court in its case of **Telegraph Department v/s. Santosh Kumar Seal, reported in (2010) 6 SCC 773** also reiterated the same principles.

The principle laid down by the Hon'ble Apex Court is well recognized and also applicable to the case in hand.

18. In the case in hand, the Workman was in the employment of the Employer from April, 2009 till 16-05-2013. Applying the law laid down by the Hon'ble Apex Court in its aforesaid judgment, in my considered opinion a lump sum compensation of Rs. 75,000/- (Rupees seventy five thousand only) would meet the ends of justice.

19. The workman also prayed for regularization of his service. As the present reference has been issued by the Government of Goa pertaining to the legality and justifiability of the action of the Employer in terminating services of the Workman w.e.f. 16-05-2013 and the relief he is entitled to. It is settled principle of law that this court cannot expand the scope of the reference beyond the terms of reference. The prayer of the workman for regularization of his services stands rejected. The judgment relied upon by Ld. Adv. Shri D. Naik has no relevance to the present reference.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action of M/s. Goa Meat Complex Limited, Marvasada, Usgao, Goa, in terminating the services of Shri Francis Fernandes, Butcher/Worker, with effect from 16-05-2013, is illegal and unjustified.

2. It is held that M/s. Goa Meat Complex Limited, Marvasada, Usgao, Goa, is hereby directed to pay to the workman, Shri Francis Fernandes, a sum of Rs. 75,000/- (Rupees seventy five thousand only) within a period of 2 months from the date of passing the order, failing which it shall bear a simple interest @ 9% per annum.

3. No order as to costs.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar)
Presiding Officer,
Labour Court-II.

Notification

No. 28/2/2019-LAB/Part-IV/559

The following award passed by the Labour Court-II, at Panaji-Goa on 08-07-2019 in Ref. Case No. IT/95/00 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 17th September, 2019.

THE LABOUR COURT-II

GOVERNMENT OF GOA AT PANAJI

**(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)**

Ref. Case No. IT/95/00

Shri Augustinho Da Costa,
Igramol, H. No. 172,
Diamt, Quepem-Goa.

... Workmen/Party I

V/s

M/s. Datsun Shipping Pvt. Ltd.,
Near Thakker House, Swatantra Path,
Vasco-da-Gama. ... Employer/Party II
Workman/Party-I represented by Shri K. V. Nadkarni.

Employer/Party-II represented by Adv. Shri A. V. Nigalye.

Panaji, Dated: 08-07-2019.

AWARD

1. In exercise of the powers conferred by Section 10 (1) (d) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 08-12-2000, bearing No. IRM/CON/VSC/(14)/2000/6107 referred the following dispute for adjudication to the Industrial Tribunal of Goa, at Panaji-Goa. The Government of Goa transferred the said dispute for its adjudication to this Labour Court-II from Industrial Tribunal of Goa at Panaji, Goa, vide its another order dated 09-02-2016.

"(1) Whether the action of management of M/s. Datsun Shipping Pvt. Ltd., Vasco-da-Gama, Goa, in terminating the service of Shri Augustinho Da Costa, Barge Master, with effect from 01-10-1999, is legal and justified?"

(2) If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/95/2000 and registered

A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 19-02-2001 at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer/Party-II (for short, 'Employer') as a Master on their barge w.e.f. 01-12-1998 as per terms and conditions laid down in their letter of appointment dated 01-12-1998. He stated that as per Clause 1 of the said letter of appointment, he was confirmed in service w.e.f. the date of appointment i.e. from 01-12-1998 as the Employer had waived the probationary period for him. He stated that as per Clause No. 5 of the said letter of appointment, it was agreed by the Employer that normally barges of the Employer do not operate in monsoon season i.e. from June to September of every year and therefore he will be paid salary of Rs. 7000/- p.m. as against fair season salary of Rs. 14,000/-. He stated that it was further confirmed in the said appointment letter that in case if he was called on duty to operate the barge, he would be paid full wages of Rs. 14,000/- p.m. for the period he has actually worked. He stated that in Goa all barges engaged in transportation of iron ore, employees employed on such barges work for only 15 days continuously on barges and enjoy off duty for 15 days in a month. He stated that he was also enjoying similar terms and conditions of employment while in employment with the Employer. He stated that he was working in the first fortnight of the month and accordingly for the month of May, 1999 he was on duty up to 15-05-1999 and thereafter, he got down from the barge for his normal off period. He stated that the barge was laid down during non-operative period of monsoon. He stated that as per his letter of appointment though he was entitled for half payment for four months from June to September, 1999, the Employer did not pay him the salaries for the laid down period of about four months. He stated that apart from the above Employer also did not call him back to report back for duties from 01-10-1999 and when he reported for work on 01-10-1999, he was not taken back on duty and was sent away. He stated that he was neither issued any notice of termination of his service nor he was conveyed anything about his status in the company. He stated that after making several trips to the office of the Employer, he finally wrote letter to the Asstt. Labour Commissioner, Vasco, Goa on 13-10-1999 and 25-11-1999. However, the ALC, Vasco did not issue any notice to the Employer. He stated that it is only after his letter dated 14-06-2000, a

notice was issued to the Employer. He stated that since he had family to support, and due to necessity, he was compelled to take employment from 25-11-1999 purely on temporary basis and on lesser salary. He stated that he was employed with Employer as a confirmed employee and for much higher salary than the new temporary employment. He submitted that the action of the Employer in refusing employment to him w.e.f. 01-10-1999 be declared as illegal and bad-in-law and direct the Employer to reinstate him in their employment with continuity in service and all other monetary and other benefits as applicable to his post.

3. The Employer resisted the claim of the Workman by filing its written statement on 06-01-2004 at Exb. 7. The Employer, as and by way of its preliminary objections, submitted that the reference is not maintainable as the Party I is not a 'workman' as defined u/s 2 (s) of the I.D. Act, 1947, that no demand was made on the Employer alleging termination of his services w.e.f. 01-10-1999 by the Employer either before them or the ALC, Vasco, Goa and that the Government of Goa has no jurisdiction to make the present reference as the appropriate Government in respect of the barge industry is the Central Government.

4. The Employer stated that it is a private limited company engaged in the business of operation of barge within the area of minor port and major port in Goa carrying the ore from the river port to the berth at the harbor or the transhipper as the case may be. The Employer stated that for the purpose of operating the barge, it has employed crew members in the category of sailors, khalashis, oilman, sukani, driver and master. The Employer stated that at the relevant time in 1999, it was not owning any barge but had taken barge on bare boat chartered agreement from the other company to run. The Employer stated that in the year 2002, the Employer purchased the said barge and became the owner of the said barge. The Employer stated that the said barge was having two engines of 372 BHP each and as such was required to be operated by a first class master. The Employer stated that the business of transporting ore by barge is for few months from October to May every year. The Employer stated that the barge is idle without business from June to September every year which is the off season being rainy season. The Employer stated that during the off season, the barges are taken to the workshop for repairs. The Employer stated that the master of the barge is the head of the barge and is only answerable to the owner. The Employer stated that the crew members on the barge are working under the supervision and

the control of the master. The Employer stated that the master being an administrative head on the barge is not a workman as defined u/s 2(s) of the I.D. Act, 1947.

5. The Employer stated that the workman was employed as a master on the barge w.e.f. 01-12-1998 on the terms and conditions stated in the letter of appointment dated 01-12-1998. The Employer stated that as per the said letter of appointment, the workman was not allowed to take up any employment with any other concern/person during the period of his employment with the Employer. The Employer stated that the workman was having license as second class master and as such he could not be employed in the normal course. The Employer stated that they have got the dispensation for workman to act as first class master from the office of the Dy. Captain of Ports, Mormugao and the said dispensation was valid up to 22-09-1999. The Employer stated that the workman worked up to May, 1999 and was paid his wages as per the letter of appointment. The Employer stated that the workman remained absent from duty from 01-06-1999 and started working at Salgaoncar Mining Industries Limited, Margao, Goa on the barge as a first class master. The Employer stated that the workman was holding a certificate of competency No. 1700 dated 14-07-1976 as a second class master and was issued a dispensation letter by the Dy. Captain of Ports, Margao to work as a first class master. The Employer stated that the dispensation is granted by the Dy. Captain of Ports based on the letter and certificate of working issued by the company with whom the master has worked before granting of the dispensation. The Employer stated that to its knowledge the workman had worked with M/s. Salgaoncar Mining Industries Limited as a master from June, 1999 and the said company had applied for dispensation to Dy. Captain of Ports, Mormugao to act as a first class master. The Employer stated that workman had attended work up to 15-05-1999 and had absented from work from 01-06-1999, when they refused to accept the demand of the workman for the salary of Rs. 20,000/- per month. The Employer stated that on 31-05-1999, the workman approached the Managing Director of the Employer and demanded that he should be paid the salary of Rs. 20,000/- per month and on refusal to agree to his demand, the workman collected his master's certificate and informed them that he is not interested in the services of the Employer and left. The Employer stated that the workman thereafter did not report for work and made a demand for salary for June/July, 1999 through the United Bargemen's

Association. The Employer stated that since the workman had not worked from 01-06-1999, they informed the union accordingly. The Employer stated that the workman thereafter raised an issue of non-payment of salary before the Assistant Labour Commissioner, Vasco-da-Gama vide his letter dated 13-10-1999. The Employer stated that there was no termination of services of the workman from 01-10-1999 by the Employer. The Employer stated that the workman had remained absent from 01-06-1999 after informing them that if his salary is not increased to Rs. 20,000/- per month, he is not interested in working with the Employer. The Employer stated that the workman has left the services on his own from 01-06-1999 and as such the workman is not entitled to any relief and the reference be rejected.

6. Thereafter, the Workman filed his rejoinder on 15-04-2004 at Exb. 8. The Workman, by way of his Re-joinder, confirms and reiterates all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in the Written Statement, which are contrary to the statements and averments made by him.

7. Based on the pleadings filed by the respective Parties in the present proceedings, the Hon'ble Industrial Tribunal-cum-Labour Court framed the following issues on 06-05-2004 at Exb-9.

1. *Whether the Party I proves that the Party II terminated his services w.e.f. 01-10-1999 and that the said termination is illegal and unjustified?*
2. *Whether the Party II proves that Party I did not report for work from 01-06-1999 and hence there was no question of issuing notice of termination of service to the Party I?*
3. *Whether the Party I proves that he is a 'workman' as defined under Section 2 (s) of the I.D. Act, 1947?*
 - 3A. *Whether there is no industrial dispute existing between the parties since no demand was raised by Party I with Party II alleging termination of his services w.e.f. 01-10-1999?*
 - 3B. *Whether Party II proves that the appropriate Government in respect of the barge industry is the Central Government and hence, the Government of Goa has no jurisdiction to make the present reference?*
4. *Whether the Party II proves that the Party I was gainfully employed from June, 1999?*
5. *Whether the Party I is entitled to any relief?*
6. *What Award?*

8. My answers to the aforesaid issues are as under:

- | | | |
|---------------------|---|---------------------|
| (a) Issue No. 1 | : | In the Affirmative. |
| (b) Issue No. 2 | : | In the Negative. |
| (c) Issue No. 3 | : | In the Affirmative. |
| (c) Issue No. 3A | : | In the Negative. |
| (d) Issue No. 3B | : | In the Negative. |
| (e) Issue No. 4 | : | In the Affirmative |
| (f) Issue No. 5 & 6 | : | As per final order. |

REASONS:

I have heard the oral arguments of Ld. Rep. Shri K. V. Nadkarny appearing for the Workman as well as Ld. Adv. Shri A. V. Nigalye appearing for the Employer.

9. Ld. Rep. Shri K. V. Nadkarny, representing the Workman, during the course of his oral arguments submitted that the Party I was working with the Employer as Master on their barge from 01-12-1998 as per the terms and conditions laid down in the letter of appointment dated 01-12-1998. He submitted that as per Clause 1 of the said letter of appointment, the Party I was confirmed in the services of the Employer from the date of his appointment by waiving the probationary period. He submitted that as per clause 5 of the letter of appointment, it was agreed by the Employer that their barges normally do not operate in monsoon season i.e. from June to September of every year and therefore, the Workman would be paid salary of Rs. 7000/- per month as against fair season salary of Rs. 14,000/-. He submitted that the Employer has signed an agreement with the union. He submitted that the benefits of the said agreement has been given to the Workman and as such the Employer is estopped from contending that the Party I is not a 'workman' within the meaning of Section 2(s) of the I.D. Act, 1947 and that the nature of duties of the Workman cannot be called as managerial, administrative and supervisory nature. In support of his oral contentions, he relied upon two judgments of Hon'ble High Court of Bombay, one in the case of **Cedric D'silva v/s. Union of India and Anr., reported in (2008) 1 LLJ 483** and another in the case of **Cricket Club of India and Anr. v/s. Baljit Shyam (Mrs.) and Anr., reported in 1998 1 CLR 570**. He also relied upon a judgment in the case of **Manoranjan Chakraborty v/s. State of West Bengal and Ors., reported in 2002 (2) LLN 579**. He submitted that the Employer is in the business of barge ore transportation. He submitted that the barge of the Employer was registered with Dy. Captain of Ports, which belongs to Government of Goa. He submitted that the barges which are operating at Margao-Goa are controlled by Dy.

Captain of Ports and paper work are forwarded to the Captain of Ports. He submitted that whenever any accident took place to the barge, they have to report to the Dy. Captain of Ports. He submitted that the annual competency certificate for operating the barge is issued by Dy. Captain of Ports. He submitted that the barge cannot be operated without competency certificate of the Dy. Captain of Ports. He submitted that the crew members are appointed only after the captain of ports issues the necessary certificate. He submitted that thus, the Captain of Ports has every right to control the operation of the barges and hence, the Government of Goa is the Appropriate Government for the barge industry and not the Central Government. He submitted that vide letter dated 13-10-1999 (at Exb. W-6), the Workman addressed a letter to the ALC, Vasco, Goa, requesting for continuity in service to him and as such there exist a demand for reinstatement in service. He submitted that the evidence on record indicates that the Workman was not allowed to report for his duties and that the said action on the part of the Employer amounts to termination of his service with effect from 01-10-1999 without any justification. He submitted that the said action of the Employer is illegal and unjustified and amounts to illegal retrenchment of his service without following the proper procedure of law. He submitted that the Workman is therefore entitled for reinstatement in service. In support of his oral contention, he relied upon a judgment of the Hon'ble Apex Court in the case of **Village Papers Mazdoor Sangh, Mehatpur v/s. State of H.P., reported in 1995 2 LLJ 628.**

10. Per contra, Ld. Adv. Shri A. V. Nigalye representing the Employer, during the course of his oral arguments submitted that undisputedly, the Workman was appointed by him vide appointment letter dated 01-12-1998 and he was confirmed on the same date as barge master. He submitted that as a barge master, he was performing the duties of managerial, supervisory and administrative in nature and drawing salary of Rs. 14,000/- p.m. He submitted that clause 8 of the appointment letter issued to the Party I on record at Exb.W-1 clearly stated that he shall be responsible to drive the barges owned/operated/leased by the Company and shall abide by all sea water traffic regulations, while driving the barge. He submitted that the oral evidence of the Workman on record clearly indicates that he was holding the top position other than all crew members and that he used to give the instructions to the khalasis to clean the barges, he was looking

after the work of driver, whether he was doing the work properly or not and if any mistakes were committed by any crew member then he was correcting the same, any mistake occurred by the crew member, he was telling them to correct the same and he used to give the instructions about the time of the barge to sukani. He submitted that the aforesaid duties and responsibilities performed by the Workman are clearly of managerial, supervisory and administrative in nature and as such the Party I is not a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947. In support of his oral contention, he relied upon a judgment of Hon'ble High Court of Bombay in the case of **Vandana Joshi v/s. Standard Chartered Bank Limited, reported in 2010 III CLR 901.** He submitted that there was no demand pertaining to the termination of services were made to the Employer. The Workman directly approached the ALC, Vasco, Goa and as such the dispute referred for adjudication is incompetent. In support of his oral contention, he relied upon a judgment in the case of **Shambhunath Goyal v/s Bank of Baroda reported in (1978) 2 SCC 353** and in the case of **Sindhu Resettlement Corporation Ltd. v/s Industrial Tribunal of Gujarat and Ors. reported in 1968 SC 526.**

11. He submitted that operation of barge is a collective function of the crew and the Party I is head of the barge. The Party I has not lead any evidence in support of the issue in question, though the opportunity was given to him. He submitted that there is no evidence on record to show that the Party I was performing the duties as specified in Section 2 (s) of the I.D. Act, 1947. He submitted that the term 'appropriate government' has been defined u/s 2 (a) of the I.D. Act, 1947. He submitted that the Employer is a private limited company engaged in the business of operation of barge within the area of minor port and major port in Goa, carrying the ore from the river port to the berth at the harbour or the transhipper as the case may be. He submitted that there is an access between the major port and barge. He therefore, submitted that the appropriate Government in the present dispute is the Central Government and not the State Government and as such this Hon'ble Court has no jurisdiction to deal with the reference. In support of his contention, he relied upon the Judgment of the **Hon'ble High Court of Bombay in the case of M/s Sylvester and Co. V/s their workmen thorough Transport and Dock Workers Union & anr., reported in 2007 LAB I.C. 4103.** He submitted that there is no termination of service of the Party I by the Employer. He submitted that the

evidence on record indicates that the Party I did not collect his wages till September, 1999. He submitted that as per the document at Edb.W-3, he visited in the office of the Employer on 01-09-1999 to join his duties and there was nobody in the office as the office was closed. He submitted that the said letter at Exb.W-3 on record indicates that the Party I had not visited the office of the Employer till 01-09-1999 after June to August, 1999. He submitted that the Party I informed the Employer that he is not interested in the job. He submitted that the Party I did not allege of any misconduct, therefore there is no question of taking any disciplinary action. He submitted that the Party I is not entitled to any relief as he was just 10 months in service with the Employer. He submitted that Section 25-F of the I.D. Act, 1947 is not applicable to the present dispute as the Party I has not worked for 240 days. He therefore prayed that the dispute referred by the Government be answered in the negative.

I have carefully perused the entire records of the present case including the synopsis of written arguments filed by the Employer. I have carefully considered the legal submissions advanced by the Ld. Representatives appearing for the respective parties.

12. Issue No. 3:

I am deciding the issue No. 3 first prior to the issue No. 1 and 2 as the said issue No. 3 touches the root jurisdiction of this court to adjudicate the present reference.

The Employer pleaded that the Party I being the master of the barge was performing the duties of supervisory and administrative in nature and as such he is not a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947. The burden to prove is on the Party I that he is a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947 and as such this court has jurisdiction to adjudicate the present reference.

13. In the case of **Cedric D'Silva (Supra)** the division bench of Hon'ble High Court of Bombay, the Petitioner at the relevant time of his termination of services was working as a Sr. Commander. The two national airlines namely, Air India and Indian Airlines (now merged) continue to enter into settlements under the I.D. Act with their pilots including Sr. Commanders. In other words, in a large section of the industry they are still considered to be a workman and not doing work which is managerial or supervisory in nature. The Hon'ble High Court has held that the petitioner is a 'workman'.

14. In another case of **Cricket Club of India and Anr. (supra)**, the Hon'ble High Court of Bombay has relied upon a judgment of the Hon'ble Apex Court in the case of Workmen of **M/s. Hindustan Lever Ltd. and Ors. v/s. Management of Hindustan Lever Ltd., reported in 1984 LIC 276**, on the issue whether the Company is estopped from contending that a person was not 'workman' was observed that "the agreement relied upon by the union is a valid subsisting agreement which is in force. It is neither repudiated nor terminated. It is binding upon both the parties. Once the agreement is held to be binding, the Employer is estopped from contending that the workman involved in the dispute who were salesman were not workmen within the meaning of the expression under the Act and held that the petitioner is a 'workman'.

15. In the case of **Monoranjan Chakraborty (supra)**, the Hon'ble High Court of Calcutta held that the petitioner was working as 'supervisor'. The petitioner was charge-sheeted, the order of dismissal and initiation of domestic enquiry and conclusion of that which were held in terms of the standing orders of the Company. The Respondent is therefore estopped from taking different stand that the petitioner was a supervisor and not a workman.

16. The principle laid down by the Hon'ble Apex Court, Hon'ble Bombay High Court and Hon'ble Calcutta High Court in its aforesaid respective judgments is well established and also applicable to the case in hand. Applying the law laid down by the Hon'ble Apex Court as well as Hon'ble High Court of Bombay, the first witness of the workman, Mr. Anthony Lobo in his affidavit in evidence deposed that he is one of the signatory to the settlement arrived at between Goa Barge Owners Association and barge crew employed by them and represented by their union namely United Bargemen's Association and produced copy of the said settlement arrived between Goa Barge Owners Association and the Union dated 29-03-2007 in the course of conciliation proceedings u/s 12(3) r/w Section 18 (3) of the I.D. Act, 1947 and that for the last nearly two decades barge owners have been executing memorandum of settlement in the conciliation proceedings held by the State Level Commission. He further deposed that All Goa Barge Owners have accepted that the masters being it first class or second class are the workmen and accordingly, the benefits of all the settlements are extended to first class and second class masters. In his cross-examination, that the Employer is a party to the said settlement. The aforesaid oral evidence of the first witness of the workman have not been

denied by the Ld. Advocate for the Employer, and as such, the said oral evidence remained unchallenged. In view of the aforesaid settlement signed by the Goa Barge Owners Association and the Union, the Employer is estopped from contending that the Party I is not a 'workman' as defined in the Section 2 (s) of the I.D. Act, 1947.

17. Ld. Shri A. V. Nigale representing the Employer pointed out in the oral evidence that the Workman being Master used to instruct the sukani who was driving the barge as per his instructions. The instructions of tying of the barge were given by the workman to sukani, whenever the barge was anchored at the berth and the transshiper. He used to give the instructions to the khalasis to clean the barge. He was looking after the work of driver whether he was doing the work properly or not, and if any mistakes were committed by any crew member, he was correcting the same. The discipline on the barge was maintained by the crew members but any mistake occurred, he was telling them to correct the same. The aforesaid duties are supervisory in nature. He relied upon a case of Vandana Joshi (supra), wherein the Hon'ble High Court of Bombay has held that the power to sanction leave or initiate disciplinary proceedings is not decisive factor in arriving at a conclusion, whether the employee is a 'workman' u/s 2 (s) of the I.D. Act, 1947 or not. Looking into the dominant nature of duties and responsibilities performed by the Appellant, we are of the opinion that the Appellant was appointed in the bank's lower management cadre.

The facts before the Hon'ble High Court is totally different than the case in hand and hence, the principle laid down by the Hon'ble High Court of Bombay is not applicable to the case in hand.

Hence it is held that the Party I proves that he is a 'workman' as defined u/s. 2 (s) of the I.D. Act, 1947. The issue No. 3 is therefore, answered in the affirmative.

18. Issue No. 3A:

Ld. Adv. Shri A. V. Nigalye during the course of his oral arguments pointed out the letter of the workman dated 13-10-1999 addressed to the Asstt. Labour Commissioner, Vasco-da-Gama (Exb. W-6) by which the Workman has raised the present dispute and submitted that no demand letter was issued to the Employer alleging termination of his services w.e.f. 01-10-1999 at any point of time by the Workman and as such there does not exist any industrial dispute between the parties. He relied upon the judgment in the case of **Sindhu Resettlement** (Supra) as well as **Shambu Nath Goel** (supra).

19. In the case of **Sindhu Resettlement Corporation Ltd. v/s Industrial Tribunal of Gujarat and Ors. reported in 1968 SC 526**, the Hon'ble Apex Court has held that "if no dispute at all is raised by the employees with the management, any request sent by them to the Government would only be a demand by them and not an Industrial Dispute between them and their employer".

The Hon'ble Supreme Court of India however in its subsequent judgment in the case of **Shambhunath Goyal v/s Bank of Baroda reported in (1978) 2 SCC 353** distinguished its aforesaid Judgment passed in the case of Sindhu Resettlement Corporation Ltd. and held that:

"The definition of industrial dispute in Section 2(k) of the Industrial Disputes Act, 1947 shows that where there is a dispute or difference between the parties contemplated by the definition and the dispute or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine qua non".

20. Thus the principle laid down by the Hon'ble Supreme Court of India in the case of Shambhunath Goyal is applicable to the present case. In the case in hand, the union vide its letter dated 01-09-1999 (Exb. W-3) and another letter dated 10-09-1999 (Exb. W-4) addressed to the Employer for settlement of the workman. The Workman thereafter raised a dispute vide his letter dated 13-10-1999 (Exb. W-6) before the Asstt. Labour Commissioner, Vasco, Goa and requested for payment of his wages and continuity of services. In reply to the notice issued to him, the Workman, by his letter dated 25-11-1999 (Exb. W-8), addressed to the ALC, Vasco, Goa stated that he has not been allowed to work from this month orally in its office by the Employer and that amounts to refusal of employment. The aforesaid evidence on record indicates that the Workman has raised an industrial dispute pertaining to his non-payment of wages as well as refusal of employment to him. Hence the contention of the Employer that no demand pertaining to the termination of services were made to the Employer is without any merits. It is held that the Employer failed to prove that there is no industrial dispute existing between the parties since no demand was raised by the workman with the Employer alleging

termination of his services w.e.f. 01-10-1999. The issue No. 3A is therefore answered in the negative.

21. *Issue No. 3B:*

The Employer in its written statement, filed in the present proceedings contended that the Government of Goa has no jurisdiction to make the present reference as the Appropriate Government in respect of the barge industry is the Central Government.

Section 2 (a) of the I.D. Act, 1947 defines the term 'Appropriate Government' and it means

(a) 'Appropriate Government':-

- (i) In relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the [Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)], or the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5-A and Section 5-B, respectively, of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952) or the Life Insurance Corporation of India established under Section 3 of Life Insurance Corporation Act, 1956 (31 of 1956), or [The Oil and Natural Gas Corporation Ltd. registered under the Companies Act, 1956 (1 of 1956)] or the deposit insurance or credit guarantee corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962) or the Unit Trust of India established under Section 3 of Unit Trust of India Act, 1963, or the Food Corporation of India established under Section 3, or a Board of Management established for two or more

contiguous states under Section 16 of the Food Corporations Act, 1964 (37 of 1964), or [The Airports Authority of India constituted under Section 3 of the Airport Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Indian Reconstruction Bank of India Limited], [The National Housing Bank established under Section 4 of the National Housing Bank Act, 1987 (53 of 1987), or [An Air Transport Service or a Banking or an Insurance Company], a Mine, an Oil Field] [Cantonment Board or a Major Port any company in which not less than 51% of the paid up share capital is held by the Central Government, or any Corporation, not being a Corporation referred to in this clause established by or under any law made by parliament, or the Central Public Sector Undertaking, Subsidiary Companies set up by the principle undertaking the autonomous bodies owned or controlled by the Central Government, the Central Government].

- (ii) In relation to any other industrial dispute including the State Public Sector Undertaking, Subsidiaries Companies setup by the principal undertakings an autonomous bodies owned or controlled by the State Government, the State Government:

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the Appropriate Government shall be the Central Government or the State Government as the case may be, which has control over such industrial establishment.

22. In the case in hand, the workman was appointed as Master. The Employer is a private limited company engaged in the business of operation of barge. The barge is registered under the Inland Vessels Act, 1917. As per the said Indian Vessels Act, the barge is registered with the Dy. Captain of Ports, Mormugao Harbour, which belongs to the Government of Goa. The evidence on record indicates that whenever there is an accident to the barge, they have to report to the Dy. Captain of Ports with a copy to the Captain of Ports. The evidence on record indicates that the annual competency certificate for operating the barge is issued by Dy. Captain of Ports, however, the survey report is signed by the captain of ports and that

the barge cannot be operated without competency certificate of the Dy. Captain of Ports. The evidence on record indicates that the crew members are appointed only after Captain of Ports issue the necessary certificate. Thus, the aforesaid evidence on record indicates that the State Government is empowered to act as per the Inland Vessels Act, 1917. That apart the first witness of the Workman, Shri Anthony Lobo in his affidavit in evidence deposed that all the barges in the State of Goa are registered with the Captain of Ports at the registered office of the Captain of Ports, Panaji, Goa and that the necessary certification for the operation of barges in Goa are also issued by the Captain of Ports of Goa. He further deposed that necessary sea worthiness certificate to all barges operating in Goa are also issued periodically by the office of the Captain of Ports, Goa and the movement of barges in Goa are also regulated and controlled by the office of Captain of Ports Goa. He further deposed that the necessary certificate of competency to all masters, drivers and all types of other crew employed on the barges in Goa are also issued by the Captain of Ports Goa and that all the taxes and other duties on the barges are levied and collected by the office of Captain of Ports Goa. He also deposed that all the barge owners represented to their association has conceded and submitted to the jurisdiction of State Labour Commissioner and also for the last nearly two decades the barge owners have been executing memorandum of settlement in conciliation proceedings held by the State Labour Commissioner. Therefore, for all purposes, State Government is the Appropriate Government in respect of present dispute.

23. Ld. Adv. Shri Nigalye, appearing for the Employer submitted that the barge of the Employer was engaged in the transportation of ore from the river point to Mormugao port, which is a major port and the Appropriate Government in relation to the major port is the Central Government, and relied upon the judgment of **Division Bench of Hon'ble High Court of Bombay in the case of M/s Sylvester & Co. (Supra)**. The said Judgment has no relevance to the present case. Hence, it is held that the Employer failed to prove that the Government of Goa has no jurisdiction to make present reference as the Appropriate Government in the case of barge industry is the Central Government. The issue No. 3B is therefore answered in the negative.

24. *Issue No. 1 and 2:*

Undisputedly, the Workman was appointed by the Employer as a 'Master' on its barge vide letter

dated 01-12-1998 (Exb.W-1) by waiving the probationary period and confirmed w.e.f. 01-12-1998. In terms of clause 5 of the said appointment letter issued to the workman stated that normally the barges in the Employer Company do not operate in monsoon season i.e. during June, July, August and September of each year. During such monsoon period the workman would be paid a salary of Rs. 7000/- p.m. since the barges would not be in operation. However, in case the workman is called on duty to operate the barge during such period, then he would be entitled for salary @ Rs. 14000/- p.m. for the period for which he actually worked. In view of the aforesaid clause 5 of the appointment letter issued to the workman, he is not be required to be present for duties in the monsoon season i.e. from June to September. The Employer however, did not produce on record any documentary evidence to suggest that the workman did not report for work from 01-06-1999 though he was called. The Employer also did not produce on record any notice issued to the workman directing him to report for duties failing which he would have been treated as 'abandoned his services'. During the course of his cross-examination, the Managing Director of the Employer Shri Shrikant Vaghalkar, deposed that the workman was not specifically called to attend his duty on the barge on 01-06-1999. No notice of termination as stated in clause 9 of the appointment letter at Exb. W-1 was issued to the workman. Thus, it is held that the Employer failed to prove that the workman did not report for work from 01-06-1999 and hence, there was no question of issuing notice of termination of services to him. The issue No. 2 is answered in the negative.

25. The evidence on record indicates that the Workman vide his letter dated 13-10-1999 (Exb.W-6) addressed to the ALC, Vasco, Goa informed that the Employer denied his salary as per the appointment letter issued to him nor ready to take him to work. Further evidence on record indicates that the Workman vide its letter dated 25-11-1999 (Exb. W-8) addressed to the ALC, Vasco, Goa stated that he was not allowed to work from the said month orally in his office and in presence of ALC, Vasco and the same amounts to refusal of employment. The said refusal of employment to the workman amounts to termination of his services w.e.f. 01-10-1999. Thus, the aforesaid evidence on record clearly indicates that the services of the workman have been terminated by the Employer w.e.f. 01-10-1999.

26. The evidence on record indicates that the Workman was working with the Employer as a permanent workman. The oral evidence of the

workman indicates that on 01-10-1999 he reported for duty, however, the proprietor of the Employer told him that he had no faith in him and therefore he would not allow him to report for duty. The aforesaid action on the part of the Employer amounts to refusal of employment to the workman w.e.f. 01-10-1999. The evidence on record indicates that no notice of termination was issued to the workman nor held any enquiry against the workman by issuing him charge-sheet. Hence, it is held that the action of the Employer in terminating services of the workman w.e.f. 01-10-1999 is illegal and unjustified. The issue No. 1 is therefore answered in the affirmative.

27. Issue. No. 4 and 5:

While deciding the issue No. 1 hereinabove, I have discussed and come to the conclusion that the action of the Employer in terminating services of the workman w.e.f. 01-10-1999 is illegal and unjustified. The workman in his claim statement filed in the present proceeding stated that, since he had his family to support and due to necessity, he was compelled to take employment from 25-11-1999 purely on temporary basis and on lesser salary. The evidence on record indicates that the workman was working on barge owned by M/s. Salgaonkar for some days. The evidence on record indicates that the workman was also working for Shree Damodar Shipping Lines Pvt. Ltd. wherever he was called. The workman however, admitted that the payment of vouchers dated 21-1-2003, 17-5-2003, 10-6-2004, 12-5-2005 and 6-4-2006 (Exb. 15 colly) of having received payment for the period from May, 2004, April, 2005 and March, 2006. The aforesaid evidence on record indicates that the workman was gainfully employed from 25-11-1999. The issue No. 4 is therefore, answered in the affirmative.

28. The evidence on record indicates that the date of birth of the workman is 25-05-1947. (Age as on date is 72 years) as appears on his certificate issued by the Dy. Captain of Ports. Thus, the reinstatement in service for the workman is not possible. However, taking into consideration the entire facts and relevant circumstances of the present matter, this court awards a lump sum compensation of Rs. 3,00,000/- (Rupees three lakhs only) to meet the ends of justice.

In view of the above, I pass the following order:

ORDER

1. It is held that the action of M/s. Datsun Shipping Pvt. Ltd., in terminating services of its workman, Shri Augustinho Da Costa, Barge

Master, w.e.f. 01-10-1999, is illegal and unjustified.

2. It is further held that the Employer M/s. Datsun Shipping Pvt. Ltd., Vasco-da-Gama, is hereby directed to pay to the workman a lump sum compensation of Rs. 3,00,000/- (Rupees three lakhs only).

3. No order as to costs.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar)
Presiding Officer,
Labour Court-II.

Notification

No. 28/2/2019-LAB/Part-IV/560

The following award passed by the Labour Court-II, at Panaji-Goa on 15-07-2019 in Case No. LC-II/IT/10/15 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 17th September, 2019.

THE LABOUR COURT-II

GOVERNMENT OF GOA AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble Presiding Officer)

Case No. LC-II/IT/10/15

Shri Santan Mascarenhas,

R/o. H. No. 230,

Usgaon, Ponda-Goa.

... Workman/Party-I

V/s

M/s. Goa Meat Complex Ltd.,

Marvasada, Usgaon-Goa.

... Employer/Party-II

Party-I/Workman represented by Adv. Shri D. Naik.

Party-II/Employer represented by Adv. Shri J. Lobo.

Panaji, Dated: 15-07-2019.

AWARD

1. In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by Order dated 24-06-2015, bearing No. 28/25/2015-Lab/627, referred the following dispute for its adjudication to this Labour Court II, Panaji-Goa.

- “(1) *Whether the action of M/s. Goa Meat Complex Limited, Marvasada, Usgao, Goa, in terminating the services of Shri Santan Mascarenhas, Butcher/Worker, with effect from 16-05-2013, is legal and justified?*
- (2) *If not, what relief, the Workman is entitled to?*”

2. On receipt of the reference, a case was registered under No. LC-II/IT/10/15 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Workman/Party-I (for short, 'the Workman') filed his Statement of Claim on 20-08-2015 at Exhibit-5. The Workman stated that he was employed with the Employer/Party-II (for short "the Employer") w.e.f. April, 2007 in the capacity of 'Butcher/Worker' in its slaughter operations. He stated that he was in continuous service with the Employer from April, 2007. He stated that his services were illegally terminated by the Employer w.e.f. 16-05-2013 by its order dated 10-05-2013 on the ground that the Hon'ble High Court of Bombay at Goa has passed an interim order on 30-04-2013. He stated that by the said order the Hon'ble High Court of Bombay at Goa stated that the slaughter of animals in the abattoir at GMCL has been kept in abeyance. He stated that the division Bench of Hon'ble High Court of Bombay at Goa has passed an order dated 26-06-2013 allowing the operation in the establishment of the Employer. He stated that he used to work even on Sundays and the Employer used to pay him from petty cash and the accounts department of the Employer used to take his signature on the voucher. He stated that the said vouchers are in power and possession of the Employer. He stated that the Employer used to make payment for working on Sundays apart from his monthly salary.

3. He stated that he was shocked and shattered that the Employer without following the principles of natural justice and without his any fault abruptly and illegally terminated his services with immediate effect vide order dated 10-05-2013. He submitted that the illegal and arbitrary action of the Employer amounts to unfair labour practice. He submitted that he made several requests to the Employer to take him back in service but no heed was paid to his request. He submitted that he is now unemployed and has a dependent family to support and is in great financial difficulty to meet both the ends. He submitted that the arbitrary action of the Employer is totally illegal, unjustified and contrary to law and without following the principles of natural justice. The Workman therefore

prayed that the action of the Employer in terminating his services be declared as illegal and unjustified and be reinstated him in service with full back wages and continuity in service. The workman also prayed for regularization of his services.

4. The Employer resisted the claim of the Workman by filing its written statement on 04-11-2015 at Exb.10. The Employer denied that the workman was employed with them at its establishment at Usgao, Ponda, Goa w.e.f. April, 2007 in the capacity of 'Butcher/Worker' in its slaughter operations. The Employer stated that the Workman has attempted to disguise himself as a permanent employee, when in fact his services were used in its establishment on a purely daily rated basis as and when required. The Employer denied that the workman was in continuous service with them from April, 2007. The Employer stated that the services of the workman were legally terminated by them w.e.f. 16-05-2013 vide its order dated 10-05-2013 due to the interim order of the Hon'ble High Court of Bombay at Goa dated 30-04-2013. The Employer stated that the Hon'ble High Court of Bombay at Goa vide its order dated 30-04-2013 directed them to suspend operation within its premises. The Employer stated that the said notice of termination dated 10-05-2013 is legal. The Employer stated that as the workman was a daily wage worker and his services were used only as and when they were required by them and as such the termination of services of the workman was entirely valid. The Employer stated that although the order of the Hon'ble High Court of Bombay at Goa permitted them the recommencement of operation in its premises, operations were never begun due to renovation work which began at its premises. The Employer stated that the said renovation work is still persisting on the present date. The Employer stated that the Workman was daily wage worker, as opposed to an employee and he was therefore not entitled to a salary. The Employer stated that the workman instead entitled to a daily wage, which daily wage was consolidated and paid to him once a month, only for those duration for which he was appointed on contract. The Employer submitted that the termination of services of a daily wage worker does not require application of principles of natural justice as such a termination is an administrative action and not a judicial/quasi-judicial action. The Employer admitted that they used to maintain an attendance register manually and then began to maintain the attendance register via biometric register. The Employer denied the

overall case as pleaded by the Workman and prayed for dismissal of the present reference.

5. Thereafter, the Workman filed his rejoinder on 21-03-2016 at Exb.11. The Workman, by way of his Re-joinder, confirms and reiterates all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in the Written Statement, which are contrary to the statements and averments made by him. He stated that his father, Pedro Antonio Mascarenhas was employed in the services of the Employer and has expired on 09-07-2006 while in the employment with the Employer. He stated that his mother Mrs. Conceicao Fernandes e Mascarenhas has made an application dated 07-10-2006 to the Employer under the harness scheme to provide employment to him.

6. Based on the pleadings filed by the respective parties, this court framed the following issues on 17-11-2016 at Exb. 16.

1. Whether the Workman/Party-I proves that he was employed with the Employer/Party II w.e.f. April, 2007 in the capacity of Butcher/Worker?
2. Whether the Workman/Party-I proves that the action of the Employer/Party II in terminating his services w.e.f. 16-05-2013 is illegal and unjustified?
3. Whether the Workman/Party-I is entitled to any relief?
4. What order? What award?

7. My findings to the aforesaid issues are as under:

- (a) Issue No. 1 : In the Affirmative.
- (b) Issue No. 2 : In the Affirmative.
- (c) Issue No. 3 & 4 : As per final order.

I have heard the oral arguments of Ld. Adv. Shri D. Naik, appearing for the Workman as well as Ld. Adv. Shri J. Lobo, appearing for the Employer. Ld. Adv. Shri D. Naik, appearing for the workman chose to file synopsis of written arguments.

8. Ld. Adv. Shri D. Naik, appearing for the workman, during the course of his oral arguments submitted that the Workman was employed by the Employer at its establishment at Usgao, Ponda, Goa, w.e.f. April, 2007 in the capacity of 'Butcher/Worker'. He submitted that the workman was in continuous service with the Employer from April, 2007 till his services has been illegally terminated by the Employer w.e.f. 16-05-2013 vide its order dated 10-05-2013. He submitted that before terminating

services of the workman, neither he was issued any show-cause notices or charge-sheet, nor conducted any enquiry. He submitted that the services of the workman have been terminated on the ground that the Hon'ble High Court of Bombay at Goa had passed an interim order on 30-04-2013 wherein the slaughter of animals in the abattoir at GMCL has kept in abeyance. He submitted that the division bench of Hon'ble High Court of Bombay at Goa had passed an order dated 26-06-2013 allowing the operation in the establishment of the Employer. He submitted that the workman had completed 240 days continuous service in the preceding 12 months from the date of his termination w.e.f. 16-05-2013. He submitted that the services of the workman have been terminated without giving him a one months' notice or in lieu of pay of months' notice and without paying him any retrenchment compensation, thereby violated Section 25-F of the I.D. Act, 1947. He submitted that the Employer had published an advertisement in the local newspaper for the vacant post of butcher, production helper/attendant. He submitted that the aforesaid acts on the part of the Employer amounts to violation of Section 25-G and Section 25-H of the I.D. Act, 1947. He therefore submitted that the action of the Employer in terminating the services of the Workman is illegal and unjustified. In support of his oral contentions, he relied upon three judgments, one in case of **Director, Food and Supplies, Punjab and others v/s Prakash Singh and Ors., reported in 2012-III, LLJ 378 (P & H)** of Hon'ble High Court of Punjab and Haryana, second in the case of **Sanjeevan Gramin Vaidyakiya & Samajik Sahayata Pratisthan through its Chairman and Ors. v/s. Gorakhnath Popat Bandhane and Ors., reported in 2012 (IV) LLJ 23** of Hon'ble High Court of Bombay and third in the case of **State of Gujrat v/s PWD and Forest Employees Union and Ors., reported in 2019 1 CLR 862** of Hon'ble Supreme Court of India. He submitted that the workman is unemployed from the date of his illegal termination. He submitted that since the workman was working with the Employer since April, 2007 till the date of his termination w.e.f. 16-05-2013, he may be reinstated in service with full back wages and consequential benefits thereof. He submitted that the Workman was working on daily wage basis since the date of his appointment from April, 2007 till the date of his termination w.e.f. 16-05-2013 and hence, his services shall be regularised. In support of his oral contention, he relied upon three judgments of Hon'ble Apex Court, one in the case of **Sheo Narain Nagar and Ors. v/s. State of Uttar Pradesh and Anr., reported in (2018) 13 SCC 432**, second in

the case of **ONGC Ltd. v/s. Petroleum Coal Labour Union and Ors.**, reported in 2015 (4) ALL MR 476 (S.C.) and third in the case of **State of Gujrat v/s. PWD and Forest Employee Union and Ors.**, reported in 2019 CLR 862.

9. Per contra, Ld. Adv. Shri J. Lobo representing the Employer, during the course of his oral arguments submitted that the workman was working with the Employer since April, 2007 in the capacity of Butcher/Worker in its establishment on a daily basis as and when required. He submitted that the services of the workman was terminated by them w.e.f. 16-05-2013 vide order dated 10-05-2013 due to the interim order of the Hon'ble High Court of Bombay at Goa dated 30-04-2013 which directed them to suspend operations within its premises. He submitted that as the workman was appointed as daily wage worker and not its employee permanent or otherwise, his services was terminated by order dated 10-05-2013 w.e.f. 16-05-2013. He submitted that the services of the workman was never regularised as he was not qualified for any job with them. He submitted that the termination order dated 10-05-2013 issued to the workman is just, legal and proper. He submitted that as the workman was working as daily wage worker, he was not entitled for any retrenchment compensation etc. as provided u/s 25-F of the I.D. Act, 1947 nor required the application of principles of natural justice. In support of his oral submissions, he relied upon a judgment in the case of **State of Karnataka v/s. Uma Devi**, reported in (2006) 4 SCC 1 of Hon'ble Supreme Court of India.

REASONS:

10. Issue No. 1:

The burden was cast on the workman to prove the issue No. 1. The Workman examined himself to prove his case and produced on record certain documentary evidence in support of his oral evidence. The Workman produced on record copies of extract of attendance register/muster roll for the period from April, 2007 to March, 2013 (Exb.18-colly), copies of biometric attendance record (Exb. 19-colly) and copies of extract of wage register/salary statements for the period from April, 2007 till May, 2013 (Exb. 20-colly) in support of his oral evidence. The said oral as well as documentary evidence on record indicates that the workman was working with the Employer in the capacity of butcher/worker w.e.f. April, 2007 till termination of his services w.e.f. 16-05-2013. It is therefore held that the workman proved that he was employed with the Employer w.e.f. April, 2007 in the capacity of 'butcher/worker'. The issue No. 1 is therefore answered in the affirmative.

11. Issue No. 2:

While deciding the issue No. 1, I have discussed and come to the conclusion that the Workman was employed with the Employer in the capacity of 'butcher/worker' w.e.f. April, 2007. The evidence on record indicates that the workman was employed with the Employer continuously on daily wage basis w.e.f. April, 2007 till his services discontinued by the Employer to the effect from 16-05-2013 forenoon vide its order dated 10-05-2013 (Exb. 22).

12. In the case of **Director, Food and Supplies, Punjab and (supra)**, the Hon'ble High Court of Punjab and Haryana has held as under:

"18. A conjoint and meaningful reading of these provisions would reveal that even if a person is engaged on daily wages and has completed the continuous service as defined under Section 25-B, then, his services cannot be terminated without following the statutory provisions of Section 25-F of the Act, irrespective of the fact that he was not appointed against a regular post as alleged on behalf of the management. Therefore, the contrary arguments of learned counsel for the petitioner-management "stricto sensu" liable to be and are hereby repelled under the present set of circumstances."

The principle laid down by the Hon'ble High Court of Punjab and Haryana is well recognized and it is applicable to the case in hand.

13. The Workman claimed that his services have been terminated by the Employer by contending to be illegal and arbitrary. Upon careful perusal of the termination order issued to the workman dated 10-05-2013 (Exb. 22), it appears that the slaughter of animals in the abattoir at GMCL has been kept in abeyance, the services of the workman engaged for slaughter operations stands discontinued to take effect from 16-05-2013 forenoon. Thus, the services of the workman have been terminated by the Employer otherwise than as a punishment inflicted by way of disciplinary action. The termination of services of the workman amounts to retrenchment as defined u/s. 2 (oo) of the I.D. Act, 1947. The pre-condition for valid retrenchment has been provided u/s 25-F of the I.D. Act, 1947. Retrenchment of any worker requires the compliance of Section 25-B of the I.D. Act, 1947. The evidence on record indicates that the workman has completed more than 240 days of continuous service from the twelve months preceding the date of his termination i.e. 16-05-2013. The evidence on record indicates that the Workman has not been paid retrenchment

compensation nor issued any notice nor paid one month salary in lieu of notice. The workman has produced on record copies of daily newspapers, namely the Navhind Times, Gomantak and Tarun Bharat all dated 23-03-2006 in which the advertisement were published by the Employer, calling for applications for the vacant post of worker/butcher, production helper/attendant etc. The workman has however, did not plead in his pleadings or stated on oath that, after the termination of his service, the employer recruited other person in his place. Hence, it is held that the workman failed to prove that his termination from service is in violation of Section-25-H of the I.D. Act, 1947. Hence, it is held that the action of the Employer in retrenching the services of the Workman w.e.f. 16-05-2013 is illegal and unjustified, in violation of Sec. 25-F of the I. D. Act, 1947. The issue No. 2 is therefore answered in the affirmative.

14. Issue No. 3:

While deciding the issue No. 2, I have discussed and come to the conclusion that the action of the Employer in terminating services of the Workman w.e.f. 16-05-2013 is illegal and unjustified. The evidence on record indicates that the Workman is unemployed and have a dependent family to support.

15. In the case of **Sanjeevan Gramin Vaidyakiya & Samajik Sahayata Pratisthan through its Chairman and Ors.(supra)**, the Hon'ble High Court of Bombay has held that "the respondent was working as a Laboratory Assistant with the Appellant and was working for more than five years. His services were terminated without any show-cause notice/memo, much less charges and enquiry. The said termination was set aside by the Labour Court, the respondent therefore filed the present petition. The Hon'ble High Court observed that the management had to disclose the material on which it proceeded and give opportunity to the employee before taking drastic action of termination. The Hon'ble High court further held as under:

"10. No work No wages" should be the formula. It is not necessary in every matter that full back wages should be provided and/or granted. But in case like this and considering the facts and circumstances, where the action of termination as recorded is apparently in breach of the basic principles of natural justice, there is no reason even to interfere with the order of back wages. In every matter through the principle of full back wages need not be followed but at the same time if the action if

illegal and in contravention of basic principles, I see there is no reason that the order of back wages as awarded need to be interfered with. Apparently, the respondents and his family suffered because of illegal action. Therefore, taking over all view of the matter, no interference is called for. The petition is dismissed. Ad-interim order stands vacated. No costs".

The principle laid down by the Hon'ble High Court of Bombay in its aforesaid case is not applicable to the case in hand, as the facts of the present case is different than the aforesaid case before the Hon'ble High Court of Bombay.

16. The Hon'ble Apex Court, in its case of **BSNL v/s. Bhurumal, reported in 2013 (15) SCALE 131** has held as under:

"23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular permanent workman are terminated illegally and or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

24. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since, such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (see: State of Karnataka v/s Uma Devi (2006) 4 SCC). Thus, when he cannot claim regularization and he has no right to continue even as a daily wage worker. No useful purpose is going to be served in reinstating such a workman and he can be given monetary

compensation by the court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement that too after a long gap would not serve any purpose."

The Hon'ble Apex Court in its case of **Telegraph Department v/s. Santosh Kumar Seal, reported in (2010) 6 SCC 773** also reiterated the same principles.

The principle laid down by the Hon'ble Apex Court is well recognized and also applicable to the case in hand.

17. In the case in hand, the Workman was in the employment of the Employer from April, 2007 till 16-05-2013 as daily wage worker. Applying the law laid down by the Hon'ble Apex Court, it is held that the workman is entitled to a lump sum compensation of Rs. 100000/- (Rupees one lakh only) in order to meet the ends of justice.

18. The workman also prayed for regularization of his service. As the present reference has been issued by the Government of Goa pertaining to the legality and justifiability of the action of the Employer in terminating services of the Workman w.e.f. 16-05-2013 and the relief he is entitled to. It is settled principle of law that this court cannot expand the scope of the reference beyond the terms of reference. The prayer of the workman for regularization of his services stands rejected. The judgment relied upon by Ld. Adv. Shri. D. Naik has no relevance to the present reference.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action of M/s. Goa Meat Complex Limited, Marvasada, Usgao, Goa, in terminating the services of Shri Santan Mascarenhas, Butcher/Worker, with effect from 16-05-2013, is illegal and unjustified.

2. It is held that M/s. Goa Meat Complex Limited, Marvasada, Usgao, Goa, is hereby directed to pay to the Workman, Shri Santan Mascarenhas, a lump sum compensation of Rs. 1,00,000/- (Rupees one lakh only) in order to meet the ends of justice.

3. No order as to costs.

Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar)
Presiding Officer,
Labour Court-II.

Notification

No. 28/2/2019-LAB/Part-VI/561

The following award (Part) passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 13-08-2019 in reference No. IT/5/17 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 17th September, 2019.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT

GOVERNMENT OF GOA AT PANAJI

(Before Mr. Vincent D'Silva, Hon'ble Presiding
Officer)

Ref. No. IT/5/17

Workmen,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
G-5, Macedo Apartments,
Tisk, Ponda-Goa. ... Workmen/Party I

V/s

1. M/s. Majorda Beach Resort,
Majorda,
Salcete, Goa 403 713. ... Employer/Party II(1)

2. Eastern International
Hotels Ltd., Balray Sahani
Marg, Juhu Beach,
Mumbai-400 049. ... Employer/Party II(2)

Workmen/Party I represented by Ld. Adv. Shri S. P. Gaonkar.

Employer/Party II(1) and (2) represented by Ld. Adv. Shri M. S. Bandodkar.

AWARD (Part)

**(Delivered on this the 13th day of the month
of August of the year 2019)**

In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short the Act), the Government of Goa by Order dated 17-03-2017 bearing number 28/05/2017-LAB/141 has referred the following dispute for adjudication.

"(1) *Whether S/Shri Yatin Chodenkar, Jose Francisco Mories, Savio Dias, Vincent Miranda, Ms. Candida D'Costa and*

Ms. Diana Almeida, are workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?

- (2) *If the answer to the issue No. (1) above is in the affirmative, then, whether the action of the management of M/s. Majorda Beach Resort, Majorda, Salcete, Goa, in terminating the services of the above mentioned workmen, with effect from 07-06-2016, is legal and justified?*
- (3) *If the answer to issue No. (2) above is in the negative, then, what relief the workmen are entitled to?*

2. Upon receipt of the dispute reference No. IT/05/17 was registered. Notices were issued to both the parties under registered post, upon which both the parties were served. Party I filed a claim statement at Exb. 3. Party II filed a written statement at Exb. 5.

3. In short, it is the case of Party I/workmen that they were illegally terminated by issuing unsigned letters of termination after which they made a representation dated 6-7-2016 stating that the terminations were illegal, unjustified and bad in law. The dispute of illegal termination was raised before the Dy. Labour Commissioner, Margao after which they have settled all other workmen except the Party I workmen. The management has not issued any chargesheet nor any enquiry was conducted and hence violated principles of natural justice. Hence, the dispute.

4. The Party II filed a written statement inter-alia contending that no case has been made by Party I to grant any reliefs as none of the persons mentioned in the reference were working as workmen nor they were covered under provisions of Section 2(s) of the Industrial Disputes Act.

5. In the rejoinder at Exh. 6, the Party I have denied the case set up by Party II in the written statement.

6. Based on the above averments of the respective parties, issues came to be framed at Exh. 8.

7. In the course of further proceedings, Party I workmen viz. Shri Jose Francisco Moraes, Mr. Savio Dias, Ms. Candida D'Costa and Ms. Diana Almeida represented by Shri P. Gaonkar and Party II represented by Learned Adv. Shri M. S. Bhandodkar settled the matter amicably by filing the consent terms dated 29-07-2019 along with payment receipts at Exb. 33 colly, which reads as under:

- a) It is agreed by and between the parties that each concern person concerned in the reference shall be paid following amount as mentioned against their names in full and final

settlement of all their claims arising out of settlement which shall include retrenchment/ /closure compensation as on 31-12-2018.

- | | |
|-------------------------------|----------------|
| (1) Mr. Jose Francisco Moraes | Rs. 3,02,096/- |
| (2) Mr. Savio Dias | Rs. 2,52,207/- |
| (3) Ms. Candida D'Costa | Rs. 3,54,880/- |
| (4) Ms. Diana Almeida | Rs. 2,84,720/- |
- b) That all other dues like leave salary, ex-gratia, notice pay have been already paid to them by letter dated 7-6-2016 and paid gratuity by cheque Nos. 536281, 457776, 457773, 457775 dated 18-07-2016.
- c) It is agreed by the persons concerned in the reference that they accept money hereinabove in full and final settlement of all their claims arising out of their employment and they shall have no claim against Majorda Beach Resort or Eastern International Hotels Limited of benefits which can be computed in terms of money or claim of reinstatement or re-employment.
- d) It is agreed between the parties that this application to be filed in Tribunal for disposing their entire claim concerned in the reference IT/5/17.

8. The above consent terms are signed by the Party I workmen viz. Mr. Jose Francisco Moraes, Mr. Savio Dias, Ms. Candida D'Costa, Ms. Diana Almeida and their representative Shri P. Gaonkar, so also by Shri Smith Fernandes, Sr. Deputy Manager Accounts and his Advocate Shri M. S. Bhandodkar on behalf of the Party II. I have gone through the consent terms filed as above, which in my view, are just and fair and in the interest of both the Party I workmen mentioned in Para 7 above, as well as Party II and hence, the same are accepted.

9. In the result, I pass the following:

ORDER

- (i) The reference stands partly disposed of in view of the consent terms dated 29-07-2019 filed by the Party I workmen viz. Mr. Jose Francisco Moraes, Mr. Savio Dias, Ms. Candida D'Costa, Ms. Diana Almeida and Party II at Exb. 33 colly.
- (ii) No order as to costs.
- (iii) Inform the Government accordingly.

Sd/-

(Vincent D'Silva)
Presiding Officer,
Industrial Tribunal and
Labour Court.

Office of the Commissioner, Labour & Employment

Order

No. 2/540/2019/EST/EE/491

In supersession to earlier orders, the following Officers/Officials are hereby appointed as Public Information Officer and Assistant Public Information Officer for area shown against the name to deal with the applications received from the public under the Right to Information Act, 2005.

Regional Employment Exchange, Goa

Sr. No.	Name of the Officer/ Official & Designation	Public Information Officers/ Assistant Public Information Officer	Area of Operation
1	2	3	4
1.	Shri Bhalchandra U. Sinai Kenkre, Employment Counselling Officer	Public Information Officer	Throughout the State of Goa.
2.	Shri Premjeet B. Naik Desai, Assistant Employment Officer (In his absence) Shri Cajitan Fernandes, Assistant Employment Officer	Assistant Public Information Officer	Throughout the State of Goa.

Jayant G. Tari, Commissioner (Labour and Employment).

Panaji, 13th September, 2019.

Department of Law & Judiciary

Law (Establishment) Division

Notification

No. 12-14-2014-LD/Estt/1699

On the recommendation of the Hon'ble High Court of Bombay, vide letter No. A.1218/2057/2019 dated 11-09-2019, Government of Goa is pleased to appoint Ms. Vijaya V. Ambre, District Judge-1 and Additional Sessions Judge, Mapusa, as the President, Children's Court, Panaji, for the State of Goa with immediate effect.

The expenditure towards her salary and other benefits shall be debited to the Budget Head of Women & Child Development under Demand No. 58.

By order and in the name of the Governor of Goa.

Amir Y. Parab, Under Secretary (Law-Estt.).

Porvorim, 16th September, 2019.

Department of Personnel

Notification

No. 7/8/2016-PER(PART-I)/2369

Read: Notification No. 7/8/2016-PER(PART-I)/352 dated 29-01-2019.

In exercise of the powers conferred by Article 316 of the Constitution of India read with Regulation 5 of the Goa Public Service Commission (Members and Staff) (Conditions of Service) Regulations, 1988 and in review of the notification read in preamble, the tenure of Shri Jose Manuel Noronha, as Chairman, Goa Public Service Commission shall be for six years, reckoned from the date he entered his office as Chairman or until he attains the age of sixty two years, whichever is earlier.

By order and in the name of the Governor of Goa.

Maya Pednekar, Under Secretary (Personnel-II).

Porvorim, 29th August, 2019.

Department of Power

Office of the Chief Electrical Engineer

Order

No. CEE/Estt-31-25-88/GPSC/Part III(B)/Vol IV/1909

Read: Order CEE/Estt-31-25-88/GPSC/Part III(B)/Vol IV/1204 dated 12-07-2019.

Government is pleased to order with immediate effect posting of the officers promoted as Assistant Engineer (Elect.) on regular basis.

Sr. No.	Name of the promottee Officer	Place of posting on promotion
1	2	3
1.	Shri V. D. S. Kuncolienar, Diploma	Assistant Engineer, Division III, Ponda, vice Shri Prakash Naik transferred.
2.	Shri Damodar Bicu Tari, Diploma	Assistant Engineer (Tech.), Division XVII, Mapusa against vacant post.
3.	Shri Tilak Francisco Braganza, Diploma	Assistant Engineer (Tech.), Office of the Executive Engineer (Planning), Panaji.
4.	Shri Ramesh K. Mendonca, Diploma	Assistant Engineer (Elect.), Division III, Ponda against vacant post.
5.	Smt. Deepa Jayant Miringkar, Diploma	Assistant Engineer (Com.), Sub-Div. III, Division X, Ponda against vacant post.
6.	Shri Fentan O'Dourado, Diploma	Assistant Engineer (LTMT), Sub-Div. I, Division VIII (MRT), Margao against vacant post with additional charge of Assistant Engineer (HTMT Unit).
7.	Shri Sydney D'souza Costa, Diploma	Assistant Engineer (Com.), Sub-Div. II, Division VI, Mapusa vice Shri A. K. Chandran transferred.
8.	Shri Dattaraj P. Naik, Degree	Assistant Engineer (Com.), Sub-Div. II, Division I, Panaji vice Shri Nadim Baig transferred.
9.	Shri Andre Joao Do P. S. Souza, Diploma	Assistant Engineer (Tech.), Division II (S&W), Margao against vacant post.
10.	Shri Vattu D. Sawant, Diploma	Assistant Engineer (Tech.), Division I, Panaji, vice Shri Edwin Miranda transferred.
11.	Shri Savio Benjamin Fernandes, Diploma	Assistant Engineer (Com.), Sub-Div. I, Division VI, Mapusa vice Shri Maruti Shiroor, promoted.
12.	Shri Angelo Vincent M. R. Alcaoes Rodrigues, Diploma	Assistant Engineer (O&M), Sub-Division-I, Division XIV, Verna, vice Ravikumar Bhat transferred.
13.	Shri Govind Dulo Phadte, Diploma	Assistant Engineer (Shift Duty), Division-III, Ponda against vacant post.
14.	Shri Conception P. A. Alvares, Diploma	Assistant Engineer (Shift), Division-XII, Xeldem, vice Shri Walter D'Souza transferred.
15.	Smt. Shweta Anilkumar Naique Parulekar, Diploma	Assistant Engineer (Tech.), Division-VI, Mapusa, vice Shri Ashish Rajput transferred.
16.	Kum. Dionisia Dias Juliao, Diploma	Assistant Engineer (CVC), Office of the Chief Electrical Engineer, Panaji, vice Shri Vallabh Samant transferred.
17.	Shri Sanjay P. Gaonkar, Diploma	Assistant Engineer (O&M), Sub-Division-III, Canacona, Division-XVI, Margao, vice Shri Vinayak Mhalsekar promoted.

1	2	3
18.	Shri Rajesh Purushattam Bhagat, Diploma	Assistant Engineer (O&M), Sub-Division-III, Division-X, Ponda, vice Shri Arvind Dhavalikar transferred.

2. The above officers shall join immediately at the new place of posting within a period of seven days. Any delay on part of concerned officers, they shall be responsible and answerable to the Government.

3. On promotion, the officers at Sr. No. 2, 8, 9, 11, 12, 16, 17 shall continue to hold the charge of the post of Junior Engineer (Elect.), until further orders.

By order and in the name of the Governor of Goa.

Reshma Mathew, Chief Electrical Engineer & ex officio Addl. Secretary.

Panaji, 16th September, 2019.

Order

No. CEE/Estt-31-25-88/GPSC/Part III(B)/Vol IV/1910

Read: Order CEE/Estt-31-25-88/GPSC/Part III(B)/Vol IV/1205 dated 12-07-2019.

Government is pleased to order with immediate effect posting of the officers promoted as Assistant Engineer (Elect.) on officiating basis.

Sr. No.	Name of the promottee Officer	Place of posting on promotion
1	2	3
1.	Shri Sharad G. Naik, Diploma	Assistant Engineer (O&M), Sub-Division-II, Division IV, Margao, vice Shri Pramod Naik, transferred.
2.	Shri Bento Sabina Barreto, Diploma	Assistant Engineer (O&M), Sub-Division-IV, Division VI, Mapusa, against vacant post.
3.	Shri Savio Mervin Ferrao, Diploma	Assistant Engineer (Tech.), Division IX, Tivim, against vacant post.
4.	Shri Kavendra Shrikant Naik, Diploma	Assistant Engineer (O&M), Sub-Division-III, Division IV, Margao, vice Shri Dinesh Mahale, transferred.
5.	Shri Anil Tukaram Patil, Diploma	Assistant Engineer (Shift), Division-IX, Tivim, against vacant post.
6.	Shri Satish J. Palekar, Diploma	Assistant Engineer (O&M), Sub-Division-I, Division X, Ponda, vice Shri P. P. Bharthan, transferred.
7.	Shri Suraj N. Waghmode, Diploma	Assistant Engineer (O&M), Sub-Division-III, Division XIV, Verna, vice Shri M. K. Mujwar, transferred.
8.	Shri Nitin Ramesh Bhat Prabhu, Degree	Assistant Engineer (O&M), Sub-Division-II, Division X, Ponda, vice Shri Keshav Gaude, transferred.
9.	Shri George Fernandes, Diploma	Assistant Engineer (O&M), Sub-Division-II, Division XVI, Margao, vice Shri Santosh Sawant, transferred.
10.	Shri Agnelo Rodrigues, Diploma	Assistant Engineer (LTMT), Sub-Division-II, Division VIII, Margao, Jacinta Mergulao transferred with additional charge of the vacant post of LTMT, Sub-Div-III, Mapusa.
11.	Shri Balkrishna S. Naik, Diploma	Assistant Engineer (Shift), Sub-Division-II, Amona, Division-IX, Tivim, vice Shri Suresh Sulebhavi, transferred.

2. The above officers shall join immediately at the new place of posting within a period of seven days. Any delay on part of concerned officers, they shall be responsible and answerable to the Government.

3. Promotion on officiating basis, the officers at Sr. Nos. 2, 3, 7, 11 shall continue to hold the charge of the post of Junior Engineer (Elect.), until further orders.

By order and in the name of the Governor of Goa.

Reshma Mathew, Chief Electrical Engineer & ex officio Addl. Secretary.

Panaji, 16th September, 2019.

Order

No. CEE/Estt-31-25-88/GPSC/Part-III(B)/Vol-IV/1911

On the recommendation of the Departmental Promotion Committee as conveyed by the Goa Public Service Commission vide letter No. COM/II/11/16(1)/2019/120 dated 19-06-2019, the Government is pleased to promote the following Junior Engineers (Elect.) to the post of Assistant Engineers (Elect.), Group 'B' Gazetted in the Pay Matrix Level 7 on regular basis, with immediate effect and posted at the places shown below against their names until further orders.

Sr. No.	Name of the Officers	Present place of posting	Place of posting on promotion
1	2	3	4
1.	Shri Sandip N. Salgaonkar, Diploma	O/o the Executive Engineer, Division VI, Mapusa	Assistant Engineer (Tech.), Division XVII, Mapusa.
2.	Shri M. H. Kamaladinni, Diploma	O/o the Executive Engineer, Division IV, Margao	Assistant Engineer (Tech.), Division-IV, Margao, against vacant post
3.	Shri Pradeep J. Naik, Diploma	O/o the Executive Engineer, Division XII, Xeldem	Assistant Engineer (Elect.), Division XII, Xeldem.

2. The above promotion is in pursuance to the recommendations of GPSC contained in para 8 of the Minutes of DPC held on 18-06-2019 wherein the promotion to above officers are proposed to effect on retirement of Shri Mahadevappa, Shri J. N. Revannasamy and Shri Dinkar A. Bandekar on superannuation on 31-07-2019 & 31-8-2019.

3. The promote officers shall be on probation for a period of two years. They shall exercise an option for fixation of pay under F.R-22(1) (a) (i) within one month from the date of promotion and shall be entitled for the pay in the promotional post of Assistant Engineer (Elect.) from the date they accept the post.

4. The above promotion are subject to the decision of Writ Petition Nos. 945/2017 filed by Junior Engineer Association and 986/2018 filed by Shri Kapil Natekar before the Hon'ble High Court of Bombay at Goa.

5. On promotion, they shall continue to hold the charge of the post of Junior Engineer (Elect.) until further order in addition to their own duties.

By order and in the name of the Governor of Goa.

Reshma Mathew, Chief Electrical Engineer & ex officio Addl. Secretary.

Panaji, 16th September, 2019.

Department of Public Health

Order

No. 2/50/98-II/PHD/1436

Government is pleased to accept the notice of voluntary retirement dated 04-07-2019 tendered by Dr. Sushama A. Bhonsule, Professor and Head, Department of Pharmacology, Goa Medical College under Rule 48 of CCS (Pension) Rules, 1972 and

relieve her from the post of Professor, Department of Pharmacology in Goa Medical College w.e.f. 04-10-2019 (f.n.) i.e. on expiry of three months notice period.

By order and in the name of the Governor of Goa.

Trupti B. Manerkar, Under Secretary (Health).

Porvorim, 18th September, 2019.

Order

No. 7/23/2018-III/PHD/1445

Read: Memorandum No. 7/23/2018-III/PHD/761 dated 01-07-2019.

On the recommendations of the Goa Public Service Commission as conveyed vide letter No. COM/I/5/35(4)/2018/51 dated 02-05-2019, Government is pleased to appoint Smt. Vinaya Paresh Karpe to the post of Assistant Pharmaceutical Chemist (Group "B" Non-Gazetted) in Level-6 of Pay Matrix (Pre-revised-Pay Band-2 Rs. 9,300-34,800+4200 Grade Pay) under the Institute of Psychiatry & Human Behaviour with immediate effect as per the terms and conditions contained in the Memorandum cited above.

Smt. Vinaya Paresh Karpe shall be on probation for a period of two years.

Smt. Vinaya Paresh Karpe has been declared medically fit by the Medical Board. Her appointment is made subject to the verification of her character and antecedents. In the event of any adverse matter noticed by the Government on verification of character and antecedents, her services shall be terminated.

The above appointment is made against the vacancy occurred due to retirement of Smt. Mangala Kadam, Assistant Pharmaceutical Chemist after attaining the age of superannuation on 31-12-2018.

By order and in the name of the Governor of Goa.

Trupti B. Manerkar, Under Secretary (Health).
Porvorim, 20th September, 2019.

Order

No. 11/3/89-IV/PHD/3(Part I)/1451

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/14(1)/2011/185 dated 30-08-2019,

Order

No. 10/11/91-I/PHD/2119

Read: Order No. 10/11/91-I/PHD dated 15-02-2016.

A tentative Seniority list in the grade of Chief Medical Officer under Directorate of Health Services was drawn and circulated vide Memorandum dated 15-02-2016.

The representations received from the Officers have been examined and now, a final seniority list is drawn in the grade of Chief Medical Officer under Directorate of Health Services, as under:-

Sr. No.	Name of the Doctor	Date of Appointment Order	Date of Joining	Date of Birth	Qualification	Remarks
1	2	3	4	5	6	7
1.	Dr. Maximiano Alba Jose De Sa	21-03-2018	22-03-2018	24-01-1961	MBBS, MD (T. B. Chest)	Retd. (VR).

Government is pleased to promote Dr. Sapna Sada Raut Dessai, Lecturer to the post of Assistant Professor in Department of Oral Medicine & Radiology (Oral Medicine & Oral Diagnosis) under Goa Dental College & Hospital, on regular basis in Level 11 of Pay Matrix of the 7th Pay Commission (pre-revised PB-3 Rs. 15,600-39,100+Grade Pay Rs. 6,600/-) and other allowance to be fixed as per rules with immediate effect.

The promotion is made against the vacancy occurred due to revival of post vide Order No. 4/1/2018-IV/PHD/4936 dated 25-01-2019.

By order and in the name of the Governor of Goa.

Trupti B. Manerkar, Under Secretary (Health-I).
Porvorim, 20th September, 2019.

Order

No. 11/3/89-IV/PHD(Part File)/1454

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/14(3)/2014/878 dated 29-08-2019, Government is pleased to promote Dr. Karla Carvalho, Lecturer to the post of Assistant Professor in Department of Oral Pathology under Goa Dental College & Hospital, on regular basis in Level 11 of Pay Matrix of the 7th Pay Commission (pre-revised PB-3 Rs. 15,600-39,100+Grade Pay Rs. 6,600/-) and other allowance to be fixed as per rules with immediate effect.

The promotion is made against the vacancy occurred due to revival of post vide Order No. 4/1/2018-IV/PHD/4936 dated 25-01-2019.

By order and in the name of the Governor of Goa.

Trupti B. Manerkar, Under Secretary (Health-I).
Porvorim, 20th September, 2019.

1	2	3
2. Dr. Vandana R. Dhume @ Gaunekar	21-03-2018 22-03-2018	09-03-1966 MBBS
3. Dr. Vikas P. Kuvelkar	21-03-2018 02-04-2018	29-11-1959 MBBS
4. Dr. Rupa Naik	21-03-2018 26-03-2018	03-07-1964 MBBS
5. Dr. Chandrakant Porob	21-03-2018 22-03-2018	19-08-1958 MBBS
6. Dr. Anant Palekar	21-03-2018 02-04-2018	20-06-1959 MBBS
7. Dr. Surekha Parulekar	21-03-2018 01-04-2018	17-05-1960 MBBS
8. Dr. Doreen Noronha	21-03-2018 01-04-2018	30-03-1960 MBBS

Swati A. Dalvi, Under Secretary (Health-II).

Porvorim, 16th September, 2019.

Directorate of Skill Development & Entrepreneurship

Order

No. 2/171/2019/EST/SDCT/1597

Sanction is hereby conveyed to write-off the loss due to theft of Government item which was in the custody of Shri Hanuman Kalshaonkar, Ex-VI in the year 2011 at Government ITI Pernem, amounting to Rs. 9300/- (Rupees nine thousand three hundred

only) in respect of missing item i.e. old condemned engine with gear box in terms of Rule 12(1), Annexure V of the Goa Delegation of Financial Power Rules, 2008.

By order and in the name of the Governor of Goa.

Dipak Desai, Director and ex officio Joint Secretary (Skill Development & Entrepreneurship).

Panaji, 20th September, 2019.

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